Supreme Court, U. S.
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APPENDIX

(VOLUME II—Pages 191a-572a)

In the Supreme Court of the United States

Oct. Term, 1979

No. 78-1318

HELEN B. O'BANNON, SECRETARY OF PUBLIC WELFARE,

Petitioner

vs.

TOWN COURT NURSING CENTER, et al.,

Respondents

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Murrelle Printing Co., Box 100, Sayre, Pa. 18840—(717) 882-0401

Petition for Certiorari Filed February 26, 1979

Certiorari Granted April 16, 1979

TABLE OF CONTENTS

PAGE

VOLUME I:

I. Docket Entries 1a

II. Verified Complaint 7a

III. Motions for Temporary Restraining Order and Preliminary Injunction 15a

IV. Order Dated July 21, 1977 ..... 22a

[Scheduled Hearing Transcript of Testimony and Exhibits Appear in Volume II.]

V. Defendant Beal's Motion To Dismiss 24a

VI. Defendant Califano's Motion To Dismiss 26a

VII. Plaintiffs' Motion for Extension and Renewal of Preliminary Injunction 28a

VIII. Opposing Affidavit of Claudette V. Campbell 30a

Attachment 1 ..... 36a

Attachment 2 ..... 54a

Attachment 3 ..... 58a

Attachment 4 ..... 61a

Attachment 5 .....108½a

[Hearing Transcript and Exhibits Appear in Volume II.]

IX. Order Dated September 15, 1977 ..... 117a

X. Further Order Dated September 15, 1977 118a

XI. Notice of Appeal of Plaintiffs, Emma Cooper, Mary Crawford, Hazel Kemp, Arnold L. Phillips, Delphine Taddei and Nancy Truitt 120a

XII. Notice of Appeal of Town Court Nursing Center, Inc. 122a

XIII. Motion for Injunction Pending Appeal 124a

XIV. Order of Court of Appeal Granting Town Court's Motion 142a

XV. Opinion Announcing the Judgment of the Court 144a

Concurring Opinion 150a

Dissenting Opinion 181a

XVI. Order Amending Opinion 187a

XVII. Order Extending Time To File Petition for Writ of Certiorari 189a

XVIII. Order Further Extending Time To File Petition for Writ of Certiorari 190a

VOLUME II:

XIX. Preliminary Hearing, July 26, 27, 1977 191a

PLAINTIFF, TOWN COURT NURSING CENTER, INC'S EVIDENCE:

Donald Lewis:

Direct Examination 196a

Cross-Examination 207a

Redirect Examination 216a

Tobias Bund:

Direct Examination 216a

Cross-Examination 221a

William J. Jones:

Direct Examination 222a

Cross-Examination 227a

John E. Cuminskey:

Direct Examination 229a

Cross-Examination 248a

Dr. Maurice E. Linder:

Direct Examination 251a

Cross-Examination 253a

Jesse Gaynor:

Direct Examination 254a

Cross-Examination 259a

Edward J. Zelkovitz:

Direct Examination 262a

Cross-Examination 263a

Redirect Examination 267a

DEFENDANT CALIFANO'S EVIDENCE:

Gerald Szuc:

Direct Examination 269a

Cross-Examination 282a

PLAINTIFFS' EXHIBITS:

1—Photograph, Cobbs Creek Nursing Home 290a

2—Photograph, Town Court Nursing Center 290½a

3—Letter Dated 5/20/77, to Donald Lewis, Administrator, Town Court Nursing Center, from the Commonwealth of Pennsylvania, Department of Public Welfare ... 291a

4—Letter Dated 5/17/77, to Town Court Nursing Center from the Department of Health, Education and Welfare 294a

5—Report by Professor Tobias Bund entitled "Analysis of Statement of Deficiencies Resulting from Survey Conducted March 8-11, 1977" 300a

6—Report by William J. Jones entitled "An Evaluation of the Town Court Nursing Center, June 1977" 318a

7—Report by John E. Cuminskey, Dated 6/28/77 ..... 343a

8—Report by Mr. Gaynor to Mr. Jones Dated 6/17/77 ..... 357a

9—Report by Mr. Gaynor to Mr. Coyle, Dated 7/19/77 ..... 365a

10—Report by Dr. Finkelstein to Mr. John W. Francks, Executive Director, Geriatric and Medical Centers, Inc., Dated 7/12/77 .. 369a

11—Letter from the Department of Health, Education and Welfare to Town Court Nursing Center, Dated July 19, 1976 .... 378a

DEFENDANTS' EXHIBITS:

1—Letter With Attachment Dated 5/26/77 to Donald Lewis, Administrator, Town Court Nursing Center, from Roger A. Cutt, Commissioner for Medical Programs, Commonwealth of Pennsylvania, Department of Public Welfare 380a

2—Letter Dated 6/23/77, to Roger A. Cutt, Commissioner for Medical Programs, Commonwealth of Pennsylvania, Department of Public Welfare from Donald Lewis, Administrator, Town Court Nursing Center 387a

3—Letter With Attachment Dated 2/7/77 to John Holbrook, Administrator, Town Court Nursing Center, Inc., From Roger A. Cutt, Commissioner for Medical Programs, Commonwealth of Pennsylvania, Department of Public Welfare 390a

4—Document Entitled "Statement of Deficiencies and Plan of Correction" for Town Court Nursing Center 400a

5—Document Concerning Town Court Nursing Center Entitled "Medicare/Medicaid Certification and Transmittal" 423a

6—Report Concerning Town Court Nursing Center Entitled "Medicare/Medicaid Skilled Nursing Facility Survey Report" 424a

XX. Transcript of Hearing Before Hon. John P. Fullam, J. on September 15, 1977 .... 495a

DEFENDANT'S EVIDENCE:

Claudette V. Campbell:

Direct Examination 501a

Cross-Examination 512a

Redirect Examination 518a

PLAINTIFFS' EVIDENCE:

Donald Lewis:

Direct Examination 522a

William J. Jones:

Direct Examination 523a

Cross-Examination 526a

Opinion and Order 531a

PLAINTIFFS' EXHIBITS:

12—Letter From Mr. Laff, Pennsylvania Department of Health, to Mr. Lewis, Administrator, Town Court Nursing Home, Dated July 29, 1977, With Attached Report 534a

13—Report From William Jones to Leonard Coyle, Undated 545a

DEFENDANTS' EXHIBITS:

7—Affidavit of Claudette V. Campbell ...30a, 550a

8—Document Entitled "Fourth Presentment" by the Special Investigating Grand Jury of April Term, 1976 Court of Common Pleas of Philadelphia County, Trial Division, Criminal Section 551a

VOLUME II

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 77-2474

TOWN COURT NURSING CENTER, INC., et al.

v.

FRANK S. BEAL, etc., et al.,

Philadelphia, Pennsylvania
July 26, 27, 1977

Before Hon. John P. Fullam, J.

XIX.

PRELIMINARY HEARING

Appearances:

Fox, Rothschild, O'Brien and Frankel by Nathan L. Posner, Esq., Jeffrey B. Albert, Esq., for plaintiff Town Court Nursing Center, Inc.

Abrahams & Loewenstein by William F. Coyle, Esq., for Additional Plaintiffs

Faith M. Angell, Esq., Deputy Attorney General, for Secretary of Public Welfare—Commonwealth of Pennsylvania

Margaret Hathaway, Esq., Assistant Attorney General, for Secretary of the United States—Department of Health, Education and Welfare, Defendant

Jennifer A. Stiller, Esq., Assistant Attorney General, for Department of Health—Commonwealth of Pennsylvania

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(2) (Commenced at 2:09 o'clock p.m.)

THE COURT: This is the preliminary hearing of Town Court Nursing Center and others versus the Secretary of Health, Education and Welfare.

MR. POSNER: May it please Your Honor, before proceeding with the case, may I say that in support of Your Honor's feeling expressed at the session last week in that certain of the residents of the Town Court Nursing Home being plaintiffs in this case should require separate representation and we solicited on behalf of those persons Mr. Coyle.

Mr. Coyle is a member of our Bar, and we suggested to him that we would like to see him represent these persons. Obviously they couldn't seek counsel for themselves. As a result of that, Mr. Coyle did see these people, and he advised us, even though we agreed or offered to pay his fee, refused to accept the fee. I would like him to state to the Court his reason for being here this time, sir, if I may.

THE COURT: Certainly.

MR. COYLE: Good afternoon, Your Honor. If the Court pleases, I would like to disclose that our firm was approached by Mr. Posner's firm, I believe it was on Friday afternoon, because of the fact I think my late partner, Norman Kalcheim, has been for many years active in both the local and nationwide association for the aged. Mr. Kalcheim had been ill at the time and died, and our firm thought we should undertake the cause of these individual (3) plaintiffs. And my firm asked I be here and enter my appearance in their behalf.

I want to disclose to the Court there will be no compensation by Mr. Posner's firm to our firm nor have we asked for any compensation from the individual plaintiffs, nor do we anticipate there will be any conversation because these persons are indigent.

It is under those terms and conditions I have entered my appearance on behalf of the individual plaintiffs. I have directed copies of my appearance be sent to counsel for the defendants. That is the reason why I am here today, sir.

THE COURT: That is very much appreciated. I hope the defense will not prove that the laborer is not worthy of his hire.

MS. ANGELL: It became also clear during last week's conversations the Department of Health, not a named defendant, is certainly an integral part. Jennifer Stiller, Assistant Attorney General assigned to the Department of Health, is familiar with the case and is here under Rule 10 because she is not

a member of the United States District Court for purposes of this hearing.

THE COURT: She is a lawyer?

MS. ANGELL: A lawyer and a member of the Supreme Court of Pennsylvania.

THE COURT: Glad to have you.

MR. POSNER: Your Honor, she is a very good one.

(4) THE COURT: Time will tell.

Any other preliminaries?

MR. POSNER: The only other statement I would like to make to the Court at this time is that Your Honor at the conference last week again suggested that going forward you would like some testimony concerning the type of home to be operated in the future and the safeguards to be taken in the operation of the home.

THE COURT: I don't recall expressing any such preference, and I doubt if I have ever suggested it to a lawyer that I would like to hear testimony.

MR. POSNER: Possibly I am misstating it because I was not present, but I did think Your Honor believed that you would like to know concerning who would be—

THE COURT: It is obvious if you are to be afforded any relief at all that would only be on terms that would assure the continued welfare of the persons who are living at your establishment. That doesn't rule out the necessity of showing you are entitled to some relief of some kind.

MR. POSNER: I appreciate that, sir. I will proceed on that basis, sir.

During the course of testimony, sir, I will offer evidence; but at this time as to the factual situation —but at this time I did want to say to Your Honor there have been proceedings by a local Grand Jury with respect to Town Court Nursing Home, which mention may have been made to Your Honor. The charges (5) or the allegations contained in that presentment are a subject of defense by us, and there will be a complete denial of it.

However, sir, I would hope that these facts are not referred to today because I do believe my response should be made in response to any proceedings that might be made against us; and it being a matter now within the Court of Common Pleas of Philadelphia on the Quarter Sessions Court that we proceed on the basis of the present standards of the Home and the standards we hope to maintain in the future.

THE COURT: Well, I don't mean to preclude you from that, obviously; but I, once again, would point out I don't mean anything that I have said to dissuade you from the necessity of showing that you are entitled to relief on the legal issue; namely, that you are entitled to a hearing of some kind before the rights are terminated.

The record does not establish anything as to what notice you received, what opportunities for hearing you had, what the administrative proceedings are.

MR. POSNER: These are things I would like to go into sir, at this time.

THE COURT: Proceed.

MR. POSNER: And I will call to the stand at this time Mr. Donald Lewis.

DONALD LEWIS, sworn.

(6) *Direct Examination*

BY MR. POSNER:

Q. Mr. Lewis, you are presently occupying what position at Town Court Nursing Home?

A. I am the administrator, sir.

Q. And you have been administrator of Town Court for how long, sir?

A. Since January 1, 1977.

Q. Prior to that time, sir, what was your engagement with Town Court Nursing Home?

A. I was the assistant administrator from June of 1976 until December 31, 1977.

Q. Of what facility?

A. Of Town Court.

Q. Now—

A. Prior to that I had been in various other positions at various other medical Centers.

THE COURT: Were you at Town Court before June of 1976?

THE WITNESS: No, sir.

THE COURT: O.K.

BY MR. POSNER:

Q. Now, sir, you have been an employee of Geriatric & Medical Centers, which is the parent company of Town Court?

A. Yes, sir.

(7) Q. You have been an employee of theirs for how long?

A. Since June of 1972.

Q. And in your employment, sir, were you able to visit the various homes owned and operated by Geriatric through their subsidiary corporations?

A. Yes, I have, sir.

Q. And how many homes have you visited owned and operated by Geriatric?

A. Approximately seven or eight.

MR. POSNER: Mark these two for identification.

(Two photographs were marked Plaintiffs' Exhibits No. 1 and No. 2 for identification.)

BY MR. POSNER:

Q. I show you, sir, what has been identified here in the first instance as Plaintiffs' Exhibit 2 and ask you if you will identify that photograph (handing to witness).

A. This is Town Court Nursing Center, the old wing of Town Court Nursing Center.

Q. When you say "the old wing," will you explain to His Honor what you mean by that.

A. Well, there is an additional part of the building not pictured here that was completed in 1975.

Q. How much of an addition was that? By "that," I mean how many additional rooms, how much area covered, etc.?

A. 60 patient beds, sir. It would be three floors with (8) twenty patients on each floor.

Q. And looking at this picture and as this picture is now facing you, sir, would that be to the right or the left of the building noted on this picture?

A. It would be to the left.

MR. POSNER: May I show that to Your Honor?

THE COURT: Of course.

(P-2 handed to the Court by Mr. Posner.)

BY MR. POSNER:

Q. I show you now, sir, Plaintiffs' Exhibit 1 and ask you as to what the building is that identifies (handing to witness).

A. This would be the addition to Town Court Nursing Center similar to the additions—

Q. So that—

A. It says "Cobbs Creek Nursing Home" here, but I don't believe—

Q. What address is noted thereon?

A. 1526 through 36 Lombard Street.

Q. Is that the address of Town Court?

A. Yes, it is.

Q. And the name thereon is marked "Cobbs Creek Nursing Home."

Is that the name of one of the nursing homes of Geriatric?

A. Yes, it is, sir; but this describes the present Town Court, the new section.

Q. The new section.

May I show that to Your Honor?

(9) (Plaintiff's Exhibit 1 was handed to the Court by Mr. Posner.)

BY MR. POSNER:

Q. Can you describe for His Honor the number of rooms now contained in Town Court, the number of patients or residents handled at Town Court and the general description of the various departments that you have there, sir?

A. Yes, sir. We presently have 198 beds in the nursing facility occupied by 195 patients at the present time. Rooms will be 1, 2, 3, or 4 patients to each room. It is a modern fireproof structure built of concrete and steel.

We provide skilled nursing care, which is care that will require nurses, registered nurses on duty around the clock and other staff.

As well we provide rehabilitative services such as physical therapy and speech therapy. We have a Social Service Department, a Dietary Department, a Housekeeping Department, all the functions that would be necessary.

We have consultants in the areas of dietary, a dietician, a medical director, and so on.

Q. Would you tell us the approximate ages of the persons that are residents of Town Court. I know that is going to be difficult. Can you give us some idea of the average age?

A. Yes. I would say the average age is in the middle 70s.

Q. Now, sir, another difficult question for you, if I may.

(10) The length of stay of each of these residents at the Home once they are admitted is how long?

A. I would say it is approximately a year on the average.

Q. Now, sir, I would like to bring to the knowledge of the Court the present status of Town Court insofar as its standing with the Department of Welfare and its standing with the Health, Education & Welfare Department, HEW, of the United States.

Have you received a deficiency letter in the first instance from either the State or HEW?

A. Yes. We have received a letter from both the State and the Federal Government saying that funds would be cut off for Medicare and Medicaid on approximately June 18, I believe.

(Two-page letter dated May 20, 1977, to Donald Lewis, Administrator, Town Court Nursing Center, from the Commonwealth of Pennsylvania, Department of Public Welfare, marked Plaintiffs' Exhibit No. 3 for identification.)

(Three-page letter dated May 17, 1977, to Town Court Nursing Center from the Department of Health, Education & Welfare, marked Plaintiffs' Exhibit No. 4 for identification.)

MR. POSNER: Will you use my copies as I question the witness, Your Honor?

(Documents handed to the Court by Mr. Posner.)

BY MR. POSNER:

Q. I show you what has been described here as Plaintiffs' Exhibit 3 and ask you is that one of the decertifications that (11) were addressed to you? And for the sake of shortening the proceedings, that is addressed from the Commonwealth of Pennsylvania, the Department of Public Welfare; is that not correct (indicating)?

A. That is true, sir.

Q. And is there a date contained therein, sir?

A. The date of the letter is May 20, and it says it is effective June 18, that Town Court would no longer receive payments under medical assistance.

Q. That is in addition to everything else contained in the letter?

A. Yes, sir.

Q. Now, sir, I show you Plaintiffs' Exhibit 4 and ask you whether or not that is a decertification letter addressed to you from the Department of Health, Education and Welfare of the United States?

A. Yes, it is.

Q. And in effect, sir, does that contain the same type of notice or give it to us specifically, if you will.

A. Yes. The date of the letter is May 17, and it says, "That we are terminating your facility from participation in the Medicare program effective June 18, 1977."

Q. Have you ever at any time since the dates of those notices been advised of any life safety code violations that exist at Town Court Nursing Home?

A. No, sir, not to my knowledge.

(12) THE COURT: Excuse me. But, Mr. Posner, the letter, P-4, in the text on Page 2 refers to an attached survey and plan of correction.

MR. POSNER: I am going to get to that, sir. I will ask the witness concerning that.

THE COURT: All right.

BY MR. POSNER:

Q. His Honor has just referred to the statement contained in the letter referring to a survey. Are you familiar with that survey, sir?

A. Yes. This is a survey of March 8 through 11, 1977.

Q. And based upon that survey were there any life safety code violations noted therein?

A. Not to my knowledge, no, sir.

Q. Now, since that time, sir, has there been any review by the federal authorities? I will get to the State in just a moment.

A. By the federal authorities, no, sir.

Q. Since that time, sir, has there been any survey by the Department of Public Welfare, the State of Pennsylvania?

A. Yes, sir.

Q. When, sir?

A. The State of Pennsylvania, Department of Health, was in during the first week of May a day and they were also in on June 22.

The Department of Public Welfare, medical review (13) team, was in, I believe, the first and second month—the first or second week of May.

Q. Since the receiving of those notices both from the Department of Welfare and from HEW, do you know whether or not an appeal was taken from that decertification by the proper authorities of Town Court Nursing Home?

A. Yes, sir. To my knowledge appeals have been taken.

Q. And has a hearing been set by HEW based on that appeal?

A. Not to my knowledge. I have received no word of any.

Q. Are you aware, sir, of the early May review by the Department of Welfare as to whether or not that was satisfactory or unsatisfactory?

A. Yes. We did receive notification, and through the exit interview everything appeared to be essentially satisfactory.

Q. Was there a Department of Health review on the question of proper licensing of Town Court?

A. Yes. There was a review on June 22 of this year.

Q. And do you know the results of that review?

A. I got no—I received no written response as to that; but as to the exit interview that was given to us apparently it was essentially satisfactory.

Q. Now, sir, since March of 1977, what changes have you initiated or supervised at Town Court? Let me put it to you specifically.

Insofar as personnel is concerned, have you added (14) personnel and in what areas?

A. Yes, sir, we have. We have added personnel in the area of nursing, essentially in the area of registered nurses and licensed practical nurses.

THE COURT: There is no such thing as an area of registered nurses. I don't know what you are talking about. You mean you didn't have enough registered nurses before and how you have enough or what?

THE WITNESS: No, sir. We have hired additional registered nurses.

THE COURT: How many?

THE WITNESS: Approximately three or four.

BY MR. POSNER:

Q. And how many additional practical nurses?

THE COURT: Excuse me. You are the administrator, and you can't tell me whether you have hired three or four?

THE WITNESS: Well, sir, the reason for that would be some of the people are part-time. It would be the equivalent of three or four full-time employees.

BY MR. POSNER:

Q. Now, sir, dealing with the original survey made prior to the decertification notice by HEW, have you attempted to make any corrections in order to comply with any deficiencies that they may have stated in that notice?

A. Yes, sir. We have attempted to comply, and I believe we (15) have complied with all the deficiencies that have been noted.

We have taken action on every item that was listed.

Q. And have you invited the Federal Government through HEW to review that situation?

A. Yes, sir, we have.

Q. Now, sir, in addition to the hiring of these people and the corrections that you have made, did you employ any experts in order to aid you and management in determining a course to follow as far as Town Court is concerned?

A. Yes, sir. We have hired a great number of experts in the field.

Q. Would you tell His Honor who they are.

A. Yes. We have hired Dr. Toby Bund.

Q. He is in court today, is he not?

A. Yes, sir.

Q. Who else?

A. Mr. Jones, who is an expert in nursing home administration; Mr. Cumiskey, who is a nurse and has had a great deal of experience in nursing homes. We hired a pharmacy consultant.

Q. Now, so that we do not confuse the situation, when you said you have hired them we are not talking about full-time hiring, are we?

A. No, sir, we are not. We have hired them as consultants to give us advice in various areas and what course of action to take.

Q. Under the notices from HEW and consequently of the (16) Commonwealth of Pennsylvania, Department of Welfare, has there been a cutoff of funds as of recent date?

A. No, sir. I have received no cutoff of funds. The funds to date have been coming in as they normally would as far as the Medicaid program.

As far as the Medicare program goes, we have no patients at the present time in the facility under Medicare. So I cannot say on them.

Q. We are talking about monies due for care of patients up to what time, sir, that is still coming in?

A. We have received payment through May of 1977.

Q. According to the notices, the cutoff was July 18, was it not?

A. Yes, sir.

Q. And you have received no payment since that time, and are you ready to assume that the notice contains a cutoff date?

A. Yes. It says we would not receive funds for patients after that period.

Q. Now, sir, because of a fund cutoff as of that date, could you estimate the losses to Town Court Nursing Home on a per-day basis?

A. On a per-day basis, I would estimate that we would lose approximately $25 per patient for 200 patients. That would be approximately $5,000 a day.

Q. And under those circumstances if funding is not secured (17) from the Federal Government, will you be able to continue the operation of Town Court?

A. No, sir, we cannot operate.

Q. Do you know of any beds in this area that could house these patients or residents?

A. No, sir, I do not.

MS. ANGELL: Your Honor, I object to that question. I don't think that is within his qualifications.

THE COURT: I am sorry, I can't hear you. Even if I could, there is nothing to rule on. You haven't objected yet.

MS. ANGELL: I object as to his competence to answer the question as to whether there are available beds.

THE COURT: It just establishes his knowledge, which doesn't prove anything much.

BY MR. POSNER:

Q. In your opinion, sir, as a licensed administrator of a nursing home, are the services being provided at Town Court the services in accordance with all rules of the Department of Health and for the safety of the patients that are housed in that institution?

A. Yes, sir.

MR. POSNER: Cross-examination.

Cross-Examination

BY MS. ANGELL:

Q. Mr. Lewis, I believe you in testimony mentioned two investigations by the Department of Public Welfare; is that correct?

(18) A. Recently?

Q. Recently.

A. Yes.

Q. One in December of '76 and one in May of '77; is that correct?

A. That is correct.

(Five-page letter with attachment dated May 26, 1977, to Donald Lewis, Administrator, Town Court Nursing Center, Inc., from Roger A. Cutt, Commissioner for Medical Programs, Commonwealth of Pennsylvania, Department of Public Welfare, marked Defendants' Exhibit No. 1 for identification.)

(Two-page letter dated June 23, 1977, to Roger A. Cutt, Commissioner for Medical Pro-

grams, Commonwealth of Pennsylvania, Department of Public Welfare, from Donald Lewis, Administrator, Town Court Nursing Center, marked Defendants' Exhibit No. 2 for identification.)

(Eight-page letter with attachment dated February 7, 1977, to John Holbrook, Administrator, Town Court Nursing Center, Inc., from Roger A. Cutt, Commissioner for Medical Programs, Commonwealth of Pennsylvania, Department of Public Welfare, marked Defendants' Exhibit No. 3 for identification.)

BY MS. ANGELL:

Q. I show you what has been marked D-3 and ask you to indicate what this is. Have you ever seen it before (handing to witness)?

A. Yes, ma'am, I have.

(19) Q. What is it?

A. This is a letter received by Town Court on February—the letter dated February 7, 1977, referring to the medical review that took place December 14 through December 17, 1976.

Q. Does it not in fact list deficiencies that were noted on the December visit by the Department of Public Welfare and requests that a plan of correction be determined for them?

A. It says observations, findings, and recommendations, and a plan of correction was submitted.

Q. Pursuant to this investigation—to this examination by DPW; is that correct?

A. That is correct.

Q. I show you what has been marked D-1 and ask you whether you have seen that before (handing to witness).

A. Yes, I have.

Q. What is that?

A. This is a letter dated May 26, 1977, referring to a medical review followup visit that was made at Town Court May 9, 10, and 11, 1977.

Q. Does this not again also list a series of deficiencies at Town Court and request there be corrections made?

A. I would say there is a list of recommendations for the most part.

Q. Recommendations based on what?

A. Based on their survey.

(20) Q. Which indicates certain deficiencies?

A. Well—

THE COURT: The letter will speak for yourself. What he says about it isn't going to change it.

BY MS. ANGELL:

Q. Last I show you a document which has been marked D-2 and ask you to identify this (handing to witness).

A. Yes. This is my response to the letter dated May 26, 1977.

Q. And that in fact outlines how you plan to handle the recommendations or deficiencies?

A. Yes, ma'am.

THE COURT: What is the date of D-2?

THE WITNESS: June 23, 1977.

BY MS. ANGELL:

Q. Now you indicated, Mr. Lewis, in fact medical assistance funds have not terminated as yet?

MR. POSNER: That is objected to, sir.

THE COURT: Overruled. This is cross-examination.

THE WITNESS: To my knowledge I have seen no—the only thing I have to go by is the letter received.

BY MS. ANGELL:

Q. There has been no cessation for the actual funding?

THE COURT: He is still getting money for the care provided before May; is that correct?

(21) THE WITNESS: Yes.

BY MS. ANGELL:

Q. How many medical assistance, total bed count —of 198, how many medical assistance?

A. Approximately 180.

Q. The rest are what status?

A. Private care.

Q. What is your per diem rate?

A. For medical assistance patients?

Q. Yes.

A. 24.96 per day.

Q. You indicated there were a series of hired experts that have been secured for the institution; is that correct?

A. Yes, ma'am.

Q. Are they presently at the institution? Do they now perform any duties at the institution?

A. Not on a day-to-day basis, no, ma'am.

Q. Well, what kind of basis are they hired under?

MR. POSNER: If the Court please, I can save time by offering these witnesses. As soon as Mr. Lewis is finished they can be questioned.

THE COURT: Well, that is very good, but I think she is entitled to hear from Mr. Lewis his understanding also.

Objection overruled.

What is the basis on which they are hired?

(22) THE WITNESS: Yes. These people have been hired to do an evaluation of Town Court.

THE COURT: Hired on a flat-fee basis, so much per hour, so much per day, or what?

THE WITNESS. Some by hour, some by day, sir. They have come in and given us written reports on their findings of Town Court.

BY MS. ANGELL:

Q. So they already made an examination of Town Court?

A. Yes, ma'am they have.

Q. I see.

What action, if any, would you take as a result of their recommendations?

A. I would take their recommendations under consideration and act upon them, if necessary.

THE COURT: I wonder if anybody realizes how idiotic it is thus far. All we have heard so far are general conclusory statements from everybody.

I don't know what it is all about. I don't know what recommendations we are talking about. I don't know what action he is going to take. I don't know anything about what requests were made by the State. I don't know anything about the case. I have been sitting here for almost an hour. I would hope somewhere along the line people will start getting specific.

BY THE COURT:

(23) Q. When did you hire these experts? When did you get a report from them? What do they want you to do? And when are you going to do it?

A. These experts were hired in May of 1977.

Q. After you got the termination letter, I assume; is that right?

A. Approximately around that time.

Q. What have they recommended that you do?

A. Most of their recommendations—most of their findings were that the conditions at Town Court were satisfactory as far as the patient care is concerned, as far as the services provided at Town Court are concerned.

THE COURT: Proceed, Mrs. Angell. I am sorry.

MS. ANGELL: I have no further questions. I defer to Ms. Hathaway.

(23-page document entitled "Statement of Deficiencies and Plan of Correction" for Town Court Nursing Center was marked Defendants' Exhibit No. 4 for identification.)

BY MS. HATHAWAY:

Q. Mr. Lewis, can you identify that document for me, please (handing to witness)?

MR. POSNER: I am sorry, but I can't hear you, Ms. Hathaway.

THE COURT: She asked a non-surprising question: "Can you identify that document?"

(24) You may stand anywhere you are comfortable.

MR. POSNER: Thank you, sir.

THE WITNESS: Yes. This is a statement of deficiencies and plan of correction for the survey that was done by the Department of Health of Pennsylvania, on March 8 through 11, 1977, and the plan of correction submitted by myself on April 14, 1977.

BY MS. HATHAWAY:

Q. Now, this is a federal form, Mr. Lewis?

A. Yes, it is.

Q. Who prepared the lefthand column of this form?

A. The lefthand column was prepared by the Department of Long-Term Care—the Department of Health, Division of Long-Term Care, State of Pennsylvania.

Q. Who completed the righthand side of the form?

A. I did.

Q. You did yourself?

A. For the most part, yes, ma'am.

MS. HATHAWAY: Thank you.

That will be all, Your Honor.

MS. STILLER: I have just a few questions.

BY MS. STILLER:

Q. With regard to the June 22 Department of Health survey, Mr. Lewis, did the Department of Health surveyors tell you this is a licensure survey?

A. I believe they did. I have it in my notes.

(25) Q. You had an exit interview at the conclusion of the survey. How long did it last?

A. It lasted approximately an hour.

Q. Did the surveyors cite deficiencies to you?

A. They listed recommendations. They could be called deficiencies.

Q. Did they tell you, for example, they were concerned about a patient who was found with no clothing at 10:45 a.m.

A. No, ma'am. That is what she said on the survey of March 8, 9, 1977, not the June survey.

Q. Did they cite problems of documentation of medical records?

A. Yes, I believe they did.

Q. Did they cite some deficiencies in the nursing care plans?

A. I don't recall, ma'am.

Q. Did they talk about some problems in delivery of pharmaceutical services?

A. I really would have to say I can't recall, not at that time.

Q. Was the June survey subsequent to the hiring of the consultants you referred to before?

A. Yes. It was after that, yes.

Q. You stated that you hadn't gotten a written report of that survey from the Health Department. How much time does it usually take for you to get a written report of the survey from the Department?

MR. POSNER: Objection, sir.

(26) THE COURT: Objection overruled. You may complete the question, and then we will hear the answer.

BY MS. STILLER:

Q. How much time does it normally take you to get a report from the survey from the Health Department?

A. To give you an idea, from the last survey, the one done in November, we got a report in February for it. And the one that was done in March we got a report—we received this approximately 10 days before the date of my reply, which would have been the first couple days of April.

Q. At the exit interview did the surveyors indicate to you what sort of recommendation they would be making to Harrisburg of your licensure status?

A. No, they did not.

MS. STILLER: I have no further questions.

THE COURT: Anything further?

MR. POSNER: Just one question, sir.

Redirect Examination

BY MR. POSNER:

Q. Have you received from the various persons that you refer to as experts written reports concerning the results of their surveys and their recommendations?

A. I—

Q. Referring to Professor Bund and Mr. Cumiskey and Mr. Jones and Dr. Finkelstein.

(27) A. I have not received those reports personally. Other people within Geriatric and Medical Center have, and they asked me to take action on things that were quoted in there.

MR. POSNER: Thank you, sir.

You may leave the stand unless His Honor has questions.

(The witness was excused.)

MR. POSNER: Mr. Bund.

TOBIAS BUND, sworn.

Direct Examination

BY MR. POSNER:

Q. It is Professor Bund, is it, sir?

A. Yes, sir.

Q. And what background do you have, sir, to the term "professor"?

A. I serve as professor of health care administration, French and Polyclinic Medical School in New

York City, I am a member of the faculty of the Rutgers University, New Jersey, and its Health Care Advisory Committee, a member of the faculty of the Connecticut School of Business Management and Continuing Education, member of the faculty of C.W. Post College and Medical Institute of Health.

Q. Professor, at our request, were you part of a peer review of Town Court Nursing Home?

(28) A. Yes, sir.

Q. Would you be good enough to tell His Honor —when I use the term "peer review," your interpretation of that?

A. I was requested by Geriatric Center to make an evaluation of the Town Court for the Center on Lombard Street at the latter part of May, and I visited the facility and stayed there from June 4 to June 7.

The purpose of the survey visit was to evaluate the services being rendered at the facility, the operation of its various departments, and the overall status of the patient care and that which was being rendered by the administration of that particular facility.

In this sense we consider that a peer review with regard to the survey made by the Department of Health to the State.

Q. I am not going forward, sir.

I would like to refer to specifics rather than generalities, and I am asking you what you found and what you recommended. Will you refer to specifics rather than use general terminology.

With that warning, May I say, sir, would you tell His Honor what type of examination you made, what

you did, what you found and what you recommended?

A. I surveyed the entire facility. First of all, from the viewpoint of the requirements of the Life Safety Code and found they met the standards of that particular Code.

(29) I then surveyed the facilities from the viewpoint of operations of each and every one of the departments, which meant a complete review of all the personnel folders to see that they comply with the federal and state standards as they existed at that time.

I surveyed the various operations of the departments, whether they were in operation, and I observed the nurses function in the administration of medications.

I checked the patients' charts; I checked the pharmacy labels in conjunction with the physicians' orders; I checked the service of foods, the menus, the comparison of the service of the menus and the use of the facilities in general.

I studied and made observations of the rehabilitative services of that department and found they were functioning in accordance with the orders prescribed by the attending physician. I reviewed the policies of the facility, in general the manual of the facility.

We recommended some areas to be reviewed and rewritten in order to meet the current standards of the HEW and the State Health Department of the States; and those recommendations were sent to the facility, that is, to the operators of Town Court.

I also reviewed all of the survey reports for the March 8 survey through the 11th; and by the time I

got there on June 4, 5, 6, 7, I would say that 99 percent of the items listed had been corrected.

(30) Q. Now, sir, would you be good enough to describe to His Honor the inner workings of Town Court. By that I mean the various departments, how they work, therapy, speech, whatever it may be, and the type of care you observed and whether or not you made any constructive criticism concerning that or recommendations.

A. Well, there are a number of departments, Your Honor, in each nursing home. Departments are more or less mandated by the regulations and the statutes involved. Each department functions in accordance with the administrative policies established, and most of those policies are more or less dictated and mandated by the federal and state regulations.

For example, let us that the Dietary Department. The Dietary Department functions in accordance with orders prescribed by the attendant physician for the particular patients. Those patients who require various types of diets, what have you, based upon the calorie intake, the Dietary Department in consultation with dieticians prepares the menus. The menus were prepared on a weekly cycle and several weeks prepared in advance.

The Dietary Department prepares the food in accordance with normal procedures, and the foods are delivered with the patients' identification cards so that the patients will know and the nurses on duty will know that the patients are being given the food that they require.

Similarly, the pharmaceutical supplies to the facility are all supplied on the basis of the attending

physicians' orders (31) for the particular patients. The pharmaceuticals themselves are kept in individual bins for the benefit of each patient. Nurses check the orders prior to administering of the medications, and this one facility I was very pleased to see that the nurses even went so far as to check the identification bracelets of the patients before administering it. This very often doesn't happen in most facilities, but that was an unusual event insofar as this one was particular concerned.

Each similar department was checked, Your Honor, in the sense we checked with the Maintenance Department. We spoke to the director of nurses. We observed these procedures. We discussed the food, for example, with all of the patients. The vast majority of the patients were more or less happy about the kind of food. Those who requested additional food were able to obtain it once the nurse approved it from the Dietary Department, and generally the facility itself was properly maintained on a housekeeping basis as well.

Q. Professor, did you reduce your findings to a report that you gave to management?

A. Yes, sir.

(An 11-page report by Professor Tobias Bund entitled "Analysis of Statement of Deficiencies Resulting from Survey Conducted March 8-11, 1977," was marked Plaintiffs' Exhibit No. 5 for identification.)

BY MR. POSNER:

(32) Q. I show you, sir, what has been marked Plaintiffs' Exhibit 5 and ask you is that not a copy of the written report filed by you (handing)?

A. Yes, it is.

Q. Just one other question, sir.

In your opinion, observing the operation of this home as you did from June 4 to June 7, is there any danger to the health and safety of the patients or residents who are confined there?

A. No, sir.

MR. POSNER: Cross-examine.

Cross-Examination

BY MS. HATHAWAY:

Q. Professor Bund, you say that you visited the facility June 4 through 7 of this year?

A. Yes, sir.

Q. Have you any knowledge of the conditions of the facility on or about the first week of March 1977?

A. No, ma'am.

(Pause.)

THE COURT: Anyone else?

MS. ANGELL: No, Your Honor, no questions.

THE COURT: All right, you may step down.

MR. POSNER: Thank you, Professor.

(Witness excused.)

MR. POSNER: Mr. Jones.

(33) ———

WILLIAM J. JONES, sworn.

Direct Examination

BY MR. POSNER:

Q. With what institution are you presently associated, Mr. Jones?

A. Presently I am the Director of the Department of Health and Social Services of the County of Hudson in New Jersey. I am also the Superintendent of Meadowview Hospital in Hudson County.

Q. On any prior occasion did you occupy any position either for the State of New Jersey or for the Federal Government in the State of New Jersey?

A. Yes, I did, sir. From 1969 through January of 1975 I was the Director of the Division of Medical Assistance and Health Services, Medicaid.

Q. For the State of New Jersey?

A. For the State of New Jersey.

Q. Do you have any connection, sir, with either Town Court Nursing Home or Geriatric Medical Center?

A. No, sir.

Q. At the request of Geriatic Medical Center, did you conduct a peer review of Town Court Nursing Home?

A. Yes, I did, sir.

Q. Now, sir, you were accompanied by whom on those occasions, other persons present?

(34) A. Mr. Jesse Gaynor, a pharmaceutical specialist; and I visited on June 13, 1977.

Q. Now, sir, as a result of your visit, did you file a report which you termed an evaluation of the Town Court Nursing Center?

A. Yes, I did.

Q. Would you be good enough, sir, to tell His Honor whether or not you found, and specifically, compliance with the federal and state regulations and the general physical aspects of the place and any recommendations that you made as to those conditions?

MS. ANGELL: Your Honor, may I object to the form of the question? It calls for a conclusion of law as to whether or not it is in compliance with federal and state regulations.

THE COURT: The objection is overruled. I will interpret it accordingly.

Go head.

THE WITNESS: Thank you, Your Honor.

First of all, I have never heard of Town Court before. When I was asked to do an evaluation, it was explained to me that they did have some difficulty with regulations and certification.

My first task was to take a look at the March 8 to 11 report that listed deficiencies, and I must confess to some confusion because in my opinion the deficiencies listed were not deficiencies in accordance with regulations.

For example, one deficiency listed in the Home's agreement—intermediate care facility—had lapsed. To my (35) knowledge there is no regulation requiring an agreement with ICF. This is with a general hospital. I didn't consider that a deficiency.

I visited the physical plant, the floors, the various rooms. I interviewed patients or any

relatives or visitors who were with the patients. I tried to obtain the attitude of patients and family and friends towards the Home and to get a history of the care of the Home.

I reviewed the administrative processes; and I have reviewed, as I said before, the compliance with the standards. In my opinion the physical plant is clean, is well kept. There are minimal maintenance problems involved.

Patient care in my opinion, once again, is very, very adequate. I noticed that one of the deficiencies had to do with patients with decubiti, and the deficiency stated with a decubiti was sitting in urine.

And I noted with interest that there are no patients with decubiti in the facility now. Clearing of decubiti or decutitis is evidence of good patient care, nursing care; and I questioned whether or not the patient, as insinuated in the reports, was receiving such poor care how could the decubiti be cured or healed I should say.

THE COURT: You don't know if the patient was still there?

THE WITNESS: Yes, I did, sir; and I specifically (36) requested the patient who was referred to in the room—we tracked that down. And I also interviewed other patients, families, who had been admitted to the Home with decubitis and decubitis was healed in the Home, sir.

THE COURT: Thank you.

THE WITNESS: Generally speaking, if I may, counselor, there were some other areas of reference.

BY MR. POSNER:

Q. Would you, sir, go into that.

A. Particularly with pushing a patient. I presume they meant in wheelchair—while pulling another patient. In rehabilitation we know and we teach that wheelchairs are a specialty item and must be prescribed.

One of the things I noticed, which is not peculiar to this facility, it is peculiar with most facilities, is that they do not have prescribed wheelchairs. Therefore, when you have no footrest and you are trying to transport two patients on many occasions one patients is pulled backwards. This is done not only in the institute of Physical Medicine and Rehabilitation in New York and the Chester Institute in West Orange, New Jersey, to some degree, but you will find it in many, many, if not all, nursing homes where patients do not receive the appropriate wheelchairs and it results in the observation of patients being pulled.

Other observations that were made, the showering of a patient in front of the inspectors. I really couldn't address (37) myself to that because in reviewing the showers it would seem to me the inspectors would have to enter upon the patient being showered. I really couldn't criticize the Home nor staff for inspectors being in the shower room when the inspectors would enter the room.

The other observations about the patients being showered and having the bathrobes put on back-

wards, in most institutions after showering a patient and transporting the patient they do put bathrobes on backwards until the patient is transported back to the room where they are dried and properly clothed.

So some of the observations made in my opinion, sir, were observations that could be made in any facility. And I must say I am quite amazed because the federal bible for surveyors does point out that if there are non-compliance issues then there must be a supportive document showing how the particular item that is being observed threatens the health and safety of patients, and I have seen no document except the March records. I do see no statements or narrative where the health or safety of patients has been threatened at this institution.

Q. Sir, did you document by way of a report the evaluation you made at that time?

A. Yes, sir, I submitted a report.

Q. Did you submit a report to any of the authorities aside from submitting it to management?

A. No, sir.

(A 22-page report by William J. Jones entitled (38) "An Evaluation of the Town Court Nursing Center, June 1977," was marked Plaintiffs' Exhibit 6 for identification.)

BY MR. POSNER:

Q. I show you, sir, what has been identified here as Plaintiffs' Exhibit 6 and ask you whether that is a copy, if not the original, of the evaluation you made of Town Court Nursing Home.

A. It is, sir.

Q. Now, sir, one general question that I must ask of you in your opinion as an expert. Do you

see any danger to the health and safety of the patients that are confined or are residents of Town Court Nursing Home?

A. I do not, sir.

MR. POSNER: Cross-examine.

Cross-Examination

BY MS. HATHAWAY:

Q. Mr. Jones, when did you say you were in the nursing home, in Town Court Nursing Home?

A. June 13.

Q. June 13.

Have you any knowledge about the conditions in Town Court Nursing Home in March of 1977?

A. Only from the statement of deficiencies and plan of correction dated March 8.

BY MS. ANGELL:

Q. Mr. Jones, how long were you at the facility in June?

(39) A. I was there all day from about quarter to 9 until almost 6 o'clock with the exception of 20 minutes for lunch.

Q. All right. That was the only day you were there?

A. That is correct.

Q. You had no prior contacts with Town Court?

A. That is correct.

Q. Had you had any contact with the facilities run by the corporation in New Jersey?

A. Not to my knowledge except when I was Director of the Medicaid program in New Jersey. If they had any facilities in New Jersey, they obviously

would have been associated with me as a director; but I did not know of the organization.

Q. I see.

Now, in these June 13, 1977, visits you said you spoke to patients. Approximately how many patients did you speak to, if you can recall?

A. Some 25, 26.

Q. Patients?

A. Patients.

Q. You indicated you also spoke to families. Approximately how many of those?

A. Approximately nine.

Q. And you had interviews with staff; is that correct?

A. Yes.

Q. Now, in your report here you made reference, for example, (40) to the pushing and the pulling on Page 13; and, for example, your comment is, "I presume this relates to," so that you have no actual knowledge either of the incidents or what it meant?

A. The incident—the statement of deficiencies is not specific. I presume they may be wheelchairs. I didn't assume they were physically pushing patients down the hall.

Q. But all of these are based on your reading as to what the deficiencies are?

A. That is correct.

Q. You indicated you made a series of recommendations.

Are these listed in your report?

A. Yes. I must point out there is one recommendation where I recommended they hire a consulting siatrist, and I see it came out in the type as

psychiatrist. That is a psiatrist, which is a physical, medical and rehabilitation person.

THE COURT: Is there such a word?

THE WITNESS: There is such a word. It confuses even typists.

BY MS. ANGELL:

Q. Are these recommendations made on a specific report or throughout the report?

A. Throughout the report.

Q. To your knowledge have they been satisfied, have the recommendations been met?

A. Well, I have not been back to the Home to check whether (41) the recommendations have been corrected or not. I would presume that the authorities in the Home would make the correction.

Q. But you have no direct knowledge?

A. I have no direct knowledge, no.

MS. ANGELL: Thank you.

MR. POSNER: Thank you.

THE COURT: You may step down.

Thank you, sir.

(Witness excused.)

MR. POSNER: Mr. Cuminskey.

JOHN E. CUMINSKY, sworn.

Direct Examination

BY MR. POSNER:

Q. Mr. Cuminsky, what is your present position?

A. At present I am a retired—semi-retired nursing home owner.

Q. And you are the owner of a nursing home where, sir?

A. I was the owner of a nursing home for 27 years in the State of New Jersey.

Q. You own it today, sir?

A. No, I do not. I sold it three years ago.

Q. What are your qualifications concerning the administration of being a nursing home administrator or an expert in the field of (42) nursing home care?

A. I am a licensed nursing home administrator in the State of New Jersey. I am a registered nurse in New Jersey and New York State, and I am a licensed biochemist and laboratory director of the State of New Jersey.

Q. Have you on prior occasions been involved in what we term peer reviews, sir?

A. Not specifically as such, but I have consulted over the years with many nursing home owners.

Q. Now, sir, in that capacity were you requested to make a review of Town Court Nursing Home in Philadelphia?

A. Yes. Yes, sir, I was.

Q. When did you visit the place, sir?

A. June 14 and 15.

Q. In what year?

A. 1977.

Q. Now, sir, were you alone on this occasion or were you accompanied by any other expert?

A. I was entirely alone.

Q. Will you tell His Honor specifically as possible what you were looking for, what you found, what you recommended.

A. The officials of Town Court Nursing Center had sent me a copy of the statement of deficiencies and plan of correction insofar as they related to nursing care, nursing problems, medical records, governing body and management, patient activities, nursing (43) services, medical records I think I mentioned already, and physical environment.

The reason I believe they sent these to me was because I found on the report that many of the deficiencies were overlapping from the heading area such as government body and management overlap into the nursing care. So, therefore, I have addressed myself to these as well.

Q. Did you do so, sir?

A. I did.

Q. Will you tell His Honor the result of your investigation and/or recommendations thereafter?

A. Well, when I went there I took—the first thing I did I walked through the entire institution and my first impression was very favorable. I didn't think I would be there as long as I was. Of course, I underestimated the time required to do this type of study.

So I was very favorably impressed, and then I started to go into specifics. So I was there a total of 17½ hours, except for a half an hour each day for lunch.

When I had lunch, I went at 2 o'clock in the afternoon rather than at noontime because I felt it very important to observe the methods of feeding and serving the patients.

I was also there during the hours when the patients were receiving their A.M. and P.M. care, bathing,

robing, dressing, undressing, etc., because these are the times in a nursing home (44) when you can really see if anything is being done. If you visit a nursing home at 2 o'clock or 1:30 in the afternoon a lot of things can be swept under the rug as far as patient care is concerned. You have to be there when I was to realize what was being done.

I have outlined under the same manner and under the same prefixes and tags as the State uses in their inspections or reviews, surveys, excuse me. Well, I reviewed the corporate records insofar as registered nurses were concerned. I went to the administrators, and I found everything in order. Their personnel policies, employee records, health certification, employment applications were all up-to-date and in order.

They also had work assignments for all of their personnel. They have written policies and procedures giving notice to the patients so far as responsible parties are concerned, the patients' status, parties' billing, and etc. They showed this to me, and I felt it was very satisfactory.

Under governing body and management there are many areas that run over so far as the survey is concerned by the State—run over into the area of nursing care.

For example, restraints, well, I have learned 24 patients at Town Manner; and there was a current physical border for every one of them.

THE COURT: How about Town Court? Did you see any there?

THE WITNESS: I beg your pardon?

(45) THE COURT: How about in Town Court? Did you see any there?

THE WITNESS: Yes, yes, Your Honor. That is where I was.

BY MR. POSNER:

Q. You inadvertently said Town Manner.

A. Excuse me, Town Court, Town Court, excuse me.

Well, I found them to be of the normal type of restraints that you find in a nursing home, known as Posey restraints. They are the protective type. These prevent the patient from scratching, bruising himself, or pulling out catheters or things of that nature.

I didn't observe any maltreatment or anybody being pulled backward. I saw a lot of transporting of patients from the rooms to lounges, to telephones, to the lavoratories, tub rooms and showers, and to the activity room on the main floor, and physiotherapy. It is a very busy place. A hundred eighty-six patients and nobody is restrained. All of the patients have access to all of the areas except those areas where they shouldn't, except the nurses' areas and medication areas. They are free to go back and forth where they choose, which in my opinion shows very good nursing care. They are not restrained in any way from that.

I checked the patients, the male patients as far as shaving is concerned, and grooming, and I didn't see any man who (46) needed a shave. I did notice one woman that had an excessive growth of hair on

her face, and I suggested to the RN and she consulted with a doctor as to whether to use depilatory cream or to shave the woman, and I surveyed the in-service training in this area and found it very strong on patient grooming.

There is another area where the patients have been observed with food particles lodged in their teeth and mouths. I examined about 40 patients. I used a tongue blade, a different one each time, and I didn't see anybody with food particles in their mouth.

I discussed this area with the director of operations; and I made some recommendations in this area, in the future. I feel if they are carried out, you know, this problem wouldn't come up at all; but I didn't find it.

I found the policy now established where every patient is to have a dental exam on admission by a licensed dentist and yearly thereafter. This does not call—again, it is not called for in regulations. But Town Court notified me and showed me the procedure, the policy, that they wished to do this in order to be 100 percent in this area; but this is not called for as a matter of regulation.

Mr. Jones refered he didn't see any decubiti in the facility, and I have to take issue with that, although I understand Mr. Jones checked those patients previously that had the decubiti and found they were healed. In my visit I found seven (47) decubiti. However, for 186 patients I consider this very, very remarkable. This is a very, very low incidence of decubiti; and I also found most of the decubiti the patients had them prior to their admission to Town Court.

There was also a note in this area from the surveyors that they found the patient lying in urine and there were no dressings on the patient, there was no dressing on the patient's decubiti. I checked this out, and I looked at the patient's chart. There is a procedure for treatment of decubiti that has been developed by the medical director, and in most instances he prescribes that no dressings be used on decubiti.

Now, this is a matter of his preference since he is a medical doctor; and I found patients in many instances did not have dressings on their decubiti. However, everything we checked out on the doctors' orders, and the records were all entered on treatment on the doctors' and nurses' notes on these seven decubiti.

I checked 47 Town Court patients at various times in two days. I found four lying or sitting in urine. I found this is considerably remarkable.

THE COURT: Remarkably good or bad?

THE WITNESS: Remarkably good. Two of these patients were in the process of being changed, in my opinion, and the other two patients voided just very recently.

There was a note by the civilians that no procedures for cleaning combs and brushes. I reviewed it, and it is very (48) adequate.

There was also a note that the sign-in sheets to the 11 to 7 tour of duty were not available. When I was there, they were available and reflected the necessary duties to be performed.

I reviewed a total of 52 charts selected at random by myself in all pertinent and required areas. My review substantiated that all charts showed activities, evaluations, follow-up were pertinent to the patients' needs. All the charts showed evaluation and counseling by the consulting dietician.

I reviewed 35 charts for physicians' immediate and long-term goals. They were all complete and timely.

I reviewed 52 nursing care plans and found them up-to-date. They outlined specific and complete plan of care as well as short-term goals.

My overall observation showed that the patients were receiving very, very good nursing care. I went up and down those stairs—I was there 17½ hours—I went up and down the stairs many, many times. There are two elevators, and I couldn't wait for that. No one knew what my mission was. I didn't want them to know. I said, "Come help me do this and help me do that," and they didn't know why and they did help me.

One of the criticisms was many of the patients were in poor body position or alignment. Well, the type of patient that you encounter in a skilled home in a general way I could (49) classify them they have diseases that are cardiovascular, nutritional, cancerous, arthritic, neurogenic, genital-urinary, or gastrointestional. This isn't a complete list. However, it should denote some of the immense difficulties encountered to

give rehabilitative treatment and restore those persons of those illnesses. This is another criticism of the state surveyors.

However, they have a very strong program. I also reviewed the physical therapy area, and they are making strong efforts in these areas. But these are areas where people have diseases that are largely degenerative in nature and to rehabilitate this type of case is very difficult. However, they are endeavoring, and endeavoring very hard, to do this.

I didn't see anybody in poor body position and alignment; but to mention a few patients that could go in poor body position and alignment in a matter of seconds, I mention to you the following diagnoses: Hemiplegics, paraplegics, quadraplegics, spastics, multiple sclerosis, amyotrophic sclerosis, muscular dystrophy, arteriosclerosis and so on ad infinitum.

I believe it takes a great and constant effort to try to keep these patients in good position and comfortable and free of pressure points that would cause those sores.

I checked this out very carefully, and I believe that they are fighting this and winning it at Town Court. This is my observation.

There was a critique of procedures for bowel and (50) bladder training. I discovered that this was in effect at the time of the inspection. However, they have reinforced this; and the records of this are kept by way of a card post

above the patients' beds. And all patients on this type of training have this card above their beds, and I also checked their charts. And this is documented on their charts. I checked the in-service program in all of these areas and the in-service is being reinforced and is reinforced in this area.

There is a critique as far as range of motion is concerned, patients and amputees. I discovered on the charts this is being carried out on the respective patients for whom it is called for.

While I was there, I observed five meals and checked many charts; and I believe that everyone in Town Court, Nursing Home personnel especially, are very much aware of the patients' nutritional needs. My observation was about 25 percent of the patients had to be spoon-fed, which in a sense out of 186 is quite a prodigious job. I watched the nurses and aides doing this and thought they were very kind and gentle, and I noticed many of these patients had orders for spoon-fed and carried out.

I checked out diabetic diets, salt diets, and low residue diets and so forth. I found out that they were being carried out and there were records of this being kept in the kitchen as well as on the patients' chart and in the nursing care plans.

(51) There was a critique in the area of intake and output records. Now, I checked those

charts where it was called for on particular patients, and they had this information on that. I checked out with the director of nurses about one patient mentioned in the survey report where the patient was required to have eight ounces of water at every meal, I believe, and also they didn't have the intake and output record current. Well, I was shown a letter whereby the doctor had cancelled that order quite a while previously and inadvertently the nurse in transcribing the orders for the current month carried the order forward, but it was no longer in force and it was not necessary.

I might mention at this time the only way to get the doctors—not being critical of doctors, busy men—the only way you can get the doctors to rewrite is for the nurse to rewrite the orders and the doctor to come along and initial them. This is a device all the states used, a device, if you want to call it that, in order to meet this regulation. There is no way in God's world to have doctors comply with it voluntarily and sit down and write all those orders. They simply won't do it. They simply laugh at you and walk out of the door. This is a means taken to do this and done all over the country and acceptable.

However, a nurse transcribing this many orders it is certainly not too difficult to make one little mistake. However, in other areas you can check on these mistakes and they are picked up at any rate.

(52) I didn't see any breakfast trays in evidence at 11:30. This doesn't surprise me because I haven't been in any nursing homes I ever saw the breakfast tray on the floor at 11:30 a.m. I went to the kitchen. There were no breakfast trays there because it was almost time for dinner, for lunch.

I didn't see any medications being given by anyone but RNs and LPNs. I checked some medications that were outlined in the inspection report, and I checked out all the medication charts. I found these charts all patient floors, and I checked them for proper labels, storage, and administration. I also checked the emergency medication tray for proper content.

While I was there a three-way check—that is a check of the patient order, drug proper handling, and to the patient's chart—this was being carried out and carried out in an efficient manner.

I checked 52 charts and found out medication and treatments were as ordered by the physician.

There was another critique that said there were pre-poured medications. I did not observe anything of that nature while I was there. That was not being done.

There were several verbal orders on the survey report by the State. They were not countersigned by the physician within 48 hours. When I was there, there were no orders that were not

countersigned within 48 hours. However, I note, and I must stress this in this area, you have to have cooperation of the (53) physician as well. I know they do try to cooperate. Sometimes they just don't show up at the proper time. You just have to sweat it out or call them up and try to get them there; and I have been through this myself, too.

On the review the surveyors found some medications on the patients' bedside. These were not very dangerous medications. They were things like for hemorrhoids.

THE COURT: I can read the report. Don't worry about it.

THE WITNESS: However, this much should not be in any case; and I made a recommendation in this area that this never happen again. And I showed them ways to reinforce this so it would not happen.

I reviewed the patient activities program, and I found it to be very busy and diversified. I consulted with the full-time director, and she has a college degree in this area. They carried out their patient activities in three different physical areas: in a large recreation room on the main floor; in activity rooms, one on each of four patient floors, and at the patients' bedside. General programs offered are religious services, arts and crafts, bingo, games, birthday parties, holiday observances, newspaper and public events meetings, appearances by musical

groups, play and dancing groups and residential council meetings.

The residential council is a group of people selected (54) by the institution to have some say in what they wish done in the institution, and I think this is not required by the statute or by regulation. But I think it shows a very progressive attitude on the part of the management.

However, there were some people there that didn't participate in anything. In some cases this is because of their physical and mental condition. There are others who won't participate in anything no matter what you do. There isn't many. The people were kept pretty busy, and I was there a long time each day.

I reviewed medical records, and I reviewed 52 patient charts. And I found it complete. The files of physicians and nurses were up-to-date and adequate.

Discharge planning, I reviewed the charts for this; but I consider this to be very hazy at best, in any institution. This represents medical opinion, and it is often questionable in case of illness. It is very difficult for a physician to give me an opinion in this area.

To look at me, there is no way I can tell you what I think is going to happen or I can promise you this man and woman "to just pick up your crutches and walk out the door." They just can't do that.

All the patient care plans I evaluated reflected good plans of care, gave the patient status and the goals to be strived for.

All patient consent forms were signed by the patient (55) or guardian. All nursing summaries on all three shifts were complete on all 52 charts surveyed.

I reviewed 15 charts in the area of diagnosis, therapeutics, progress notes, etc. I found them to be adequate and informational. Here, again, each physician is different in the way he believes this should be done.

There was a critique about closed medical records. I didn't have time to look at any of those, but the operations officer and the director of nurses with whom I had constant contact during my time in Town Court have told me they were now in good order.

I also looked at the physical plant because you naturally look at it as you go through; and I found it to be very, very clean and housekeeping was very, very good. The floors were exceptionally clean and shining. All areas were well dusted and ventilated. All lavatories were clean and neat. I could detect no disagreeable odors in any area.

There was a critique—and here this is called for in the regulations—that there were no electronic call buttons in three patient activity areas; that is, patient lounges. These areas were immediately adjacent to the respective nurses' stations. When I was there, I observed the tap

bells, which you tap and they ring, were installed. Now, since these are so close to the nurses' station, I am sure they would be heard if patients wanted to summon anybody.

(56) In the hazardous areas, particularly those exit doors leading to elevators and stairways, tape, which has been sprayed with an abrasive type paint—

THE COURT: Abrasive?

THE WITNESS: Abrasive type.

There was a critique in the survey report which referred to no warning devices for blind persons being in the institution. At the present time this is not to my knowledge a requirement. However, this abrasive—type paint was put on strips of adhesive or some other type of tape—I don't know what it was—and in the areas where a patient would touch them or a patient would touch them these were placed on the exit doors leading to the elevators or stairways or other areas which a blind person might stumble into.

They have also established a procedure in their in-service program to acquaint all the personnel with the necessity of indoctrinating patients now and in the future in this area.

As I mentioned, the participation at present do not call for audible or visual warning systems. Also, it is my understanding that Town Court has requested a waiver in this recommendation.

All the patient rooms are equipped with audio-visual call systems.

There was a critique that the bed patients couldn't reach the call button, persons in chairs could not reach it. Well (57) I found the call buttons were within their reach. Both the bed patients and the chair patients it was within their reach.

I didn't see any instance where the privacy—there was a reference the aides did not draw the privacy curtains at such times they were examining patients or preparing them. In two days in the facility I didn't see any instance which this happened.

I wasn't asked to look at the kitchen, but I was also a mess officer of a 900-bed station hospital at the end of World War II. So I am interested in kitchens. So I looked at the kitchen, and I know the requirements in this area, and I found the kitchen, the dishwashing area, and the storerooms to be immaculately clean and very well organized. All thermometers were in place, and all refrigerators and freezers were exceptionally clean. All foods were properly covered and stored. Their menus are good and the food was well prepared and attractively served. All kitchen rules, schedules, etc., were in order and conspicuously displayed.

I was intrigued by the physiotherapy department and housekeeping, which was good. I was impressed by the amount of activity in this department. I inquired and met the director of

the physiotherapy for Geriatric Medical Centers, and I was shown records that they treat an average of 65 patients and give 65 treatments five days a week. This is a very, very busy department and was very clean and well run.

THE COURT: You are talking about 65 each day?

(58) THE WITNESS: Yes, sir.

THE COURT: How much longer is your report?

THE WITNESS: That is it, Your Honor.

THE COURT: Recess for 10 minutes.

(Recessed from 3:40 until 3:55 o'clock p.m.)

THE COURT: Any cross-examination?

MR. POSNER: Well, sir, I haven't finished with the witness yet.

THE COURT: I am sorry, I thought you had.

BY MR. POSNER:

Q. You have testified here, sir, concerning various critiques—

THE COURT: Yes, he certainly did. We all heard it.

What is your question?

BY MR. POSNER:

Q. —and deficiencies alleged—

THE COURT: Please ask the question, Mr. Posner.

BY MR. POSNER:

Q. My question to you, Mr. Cuminsky, having reviewed those alleged deficiencies have you in your examination found that any of them exist there or have they all been corrected if they ever did exist there?

A. I didn't find any in existence at the time of my survey; and if they were present, in my opinion they have now been corrected.

Q. Now, sir, did you reduce to writing a report of your (59) investigation, your findings and your recommendations?

A. Yes, I did.

MR. POSNER: Mark this.

(A 17-page report by John E. Cuminsky dated June 28, 1977, was marked Plaintiffs' Exhibit No. 7 for identification.)

BY MR. POSNER:

Q. I show you, sir, what has been marked as Plaintiffs' Exhibit 7.

THE COURT: You mean all that stuff he has been telling from the witness stand he had it in a report?

P-7 will be received.

Anything else?

(Plaintiffs' Exhibit No. 7 received in evidence.)

MR. POSNER: One other question, sir.

BY MR. POSNER:

Q. In your opinion, having observed this nursing home in operation, is there any danger to the health and safety of the patients that are confined there?

A. No, sir, there isn't.

MR. POSNER: Cross-examine.

Cross-Examination

BY MS. HATHAWAY:

Q. Mr. Cuminsky, you testified you were in the facility June 14 and 15, 1977; is that correct?

A. That is correct.

(60) Q. Have you any knowledge what the conditions—any personal knowledge of the conditions—were of the facility in March of 1977?

A. Only what I have read in the report.

MS. HATHAWAY: Thank you.

BY MS. ANGELL:

Q. Mr. Cuminsky, have you returned to the facility since the dates you testified you have been there?

A. Yes, I did.

Q. And on what dates were you there?

A. I was there approximately—today is the 26th—I was there about the 15th of July. I happened to come to Philadelphia with my wife, and my wife is a registered nurse also. So she was interested in what I had done there. She saw my report. She said, "I would like to see the place." So I called up and I asked if I could come down and see it. They said, "Sure," and I took her through.

Q. You took a tour?

A. My wife is curious. She knows about the nursing home business.

Q. You didn't identify the nursing home you had control for over 27 years. What is the name?

A. Pine Acres Nursing Home, Madison, New Jersey.

Q. I think the corporation has three facilities in New Jersey. Are you familiar with the Mt. Laurel Convalescent Center?

(61) A. No, I am not.

Q. The Cooper River Convalescent Center?

A. No.

Q. The Burlington Woods Convelescent Center?

A. No, I am not.

Q. Did you in this report that you testified to now—which has been identified as P-7—did you make any recommendations as a result of your visit?

A. I did.

Q. Have you had the opportunity to determine whether those recommendations have been implemented or not?

A. Yes. On my visit I checked a few areas, and I found they had.

Q. How long were you at your second visit?

A. Oh, I was there about 45 minutes.

Q. During those 45 minutes you checked your recommendations?

A. Oh, not all of them. I just asked—I saw the director of nurses, the assistant, and I saw a few of the charge nurses. I said, "Did you charge such and such thing?" And they said, "Yes." I said, "How is it working?" They said, "Good."

Q. Could you identify any of those recommendations?

A. I beg your pardon?

Q. Could you identify any of those recommendations?

A. Well, I checked the area of dental care of the patients, and I made recommendations what to do.

(62) Q. What page is that one?

A. On page 4.

Q. So that in fact you determined that the policy is in the fact each patient is to have a dental exam?

A. Right.

Q. Anything else?

A. No, not really, because, as I say, I discussed some of these things with the RNs and the director of nurses. I didn't find anything substantially wrong when I was there.

Q. So in effect there are no recommendations?

A. Not many, no, just a few verbal things we discussed.

Q. I see.

How large was the institution you ran for 27 years?

A. I beg your pardon?

Q. What was the bed capacity?

A. 103 beds.

Q. And was it a skilled nursing facility?

A. Yes.

Q. Did it have medical assistance patients?

A. Yes.

Q. Approximately what proportion were medical assistance patients?

A. Approximately 25 percent.

MS. ANGELL: Thank you. No further questions.

MR. POSNER: Thank you very much, Mr. Cuminsky.

(63) (Witness excused.)

MR. POSNER: Dr. Linden.

MAURICE E. LINDEN, sworn.

Direct Examination

BY MR. POSNER:

Q. Doctor, you are a practicing physician in the City of Philadelphia?

A. Yes, I am.

Q. Do you have any specialty, sir?

A. I am a psychiatrist.

Q. And, sir, are you associated with any institutions in which you practice your expertise?

A. I am a clinical professor of psychiatry at Jefferson Medical College.

Q. Now, sir—

A. I am also—

Q. I am sorry.

A. —chief of geriatric psychiatric outpatient service for the Jefferson and Community Mental Health Center.

Q. Is there anything you wish to add as to your qualifications?

A. I am Board-certified.

Q. And have you been practicing your field for how many years?

A. About 32.

Q. Now sir, what is your contact with Town Court Nursing Home?

(64) A. Town Court is in our catchment area, the mental health area that Jefferson Medical College services. So that I am occasioned to have the privilege of them calling upon us for psychiatric assistance, which we rendered on quite a number of occasions.

Q. Have you personally rendered such service to them?

A. Yes, I have. I have also brought my social worker with me.

Q. And on these occasions do you receive any compensation or remuneration from Town Court Nursing Home?

A. None whatever. We try to be reimbursed—that is, the clinic—through medical assistance or Medicare. That is often quite difficult.

Q. Now, sir, you have observed many of the patients at the Town Court Nursing Home?

A. Oh, yes.

Q. Would you care to give us an estimate of how many you may have observed during the course of your visits there.

A. In the past three years the total number of people that I have seen there at the Home I suppose they would number in the 300, 200.

Q. Now, sir, assuming that these patients had to be removed within a short period of time such as 30 days or 60 days, would there be any effect on these patients from the mental point of view—forgetting

the physical aspects of it in your opinion—and, if so, will you give His Honor the reasons therefore.

A. Yes. My opinion in this instance is studied. It is (65) based on experience in the field of gerontology and geriatrics, the field I have been in since 1946.

There is copious evidence in the literature that the transfer of dependent elderly patients out of an institution of health care, nursing homes, for example, tends to be on a high mortality rate. Some get sicker and some die.

Q. In your opinion would the removal of any of these patients endanger their lives or aggravate their mental or health conditions?

A. On the basis of that finding, I think we could safely say yes.

Q. In your opinion is there any danger to the health and safety of the patients that are presently residents or patients at Town Court Nursing Home?

A. I have not found reason to believe that. I think there is no such danger to their health or safety at the present time.

MR. POSNER: Cross-examine.

THE WITNESS: Nor was there at any time I have visited it.

MR. POSNER: Cross-examine.

Cross-Examination

MS. HATHAWAY: I have nothing, Your Honor.

THE COURT: Any questions?

MS. ANGELL: Yes.

BY MS. ANGELL:

Q. Dr. Linden, had you read the material that was provided (66) on the Department of Health survey that was used by the Federal Government? Had you read the report?

A. The report made about this institution?

Q. Yes.

A. No, I have not.

Q. Have you seen any reports made by the Department of Public Health or their surveys made in reference to this institution?

A. No, I have not.

MS. ANGELL: No further questions.

MR. POSNER: Thank you very much, Doctor.

THE COURT: You may step down. Thank you, sir.

(The witness is excused.)

MR. POSNER: Mr. Gaynor.

JESSE GAYNOR, sworn.

Direct Examination

BY MR. POSNER:

Q. Mr. Gaynor, are you associated with Town Court Nursing Home?

A. No, sir.

Q. What field are you familiar?

A. I am a registered pharmacist, the State of New Jersey.

Q. And you are presently doing what, sir?

A. Presently Executive Vice-President of a company called (67) Automated Pharmaceutical Services. We specialize and provide pharmaceutical services to long-term care facilities. We currently service 26 facilities in New Jersey.

Q. Do you serve any of the geriatric institutions in New Jersey?

A. No, sir.

Q. Now, sir, what is your past history in the field of pharmacology?

A. Prior to joining A.P.S. in March of 1976, I was chief, pharmaceutical services, in a New Jersey Medicaid program.

Q. You were a state employee or director, sir?

A. Yes, state employee.

Q. Now, sir, at our request did you make a "peer review" of Town Court Nursing Home?

A. Yes.

Q. Would you be good enough, sir, to tell His Honor what you investigated, what you found, and what recommendations, if any, you made?

MS. ANGELL: Excuse me, Your Honor. If that is in the form of a report, could we have that?

THE COURT: Do you have a report?

THE WITNESS: Yes, I do. I submitted a report.

BY MR. POSNER:

Q. You submitted a report to whom, sir? Did you submit a report?

(68) A. Yes, I did. That is a copy of it (indicating).

Q. To whom did you submit the report?

A. That report was submitted to Mr. Jones.

Q. Mr. Jones had testified here prior?

A. Yes.

Q. I see.

A. There was a followup visit. This is the followup report that was made to Mr. Coyle.

Q. Who is Mr. Coyle, sir?

A. Mr. Coyle, as I understood it, is the attorney for the Town Court Nursing Home.

Q. You are not talking about the Mr. Coyle sitting at counsel table here?

A. No.

Q. Now, sir, do you have any copies of this?

A. You can have those.

MR. POSNER: Your Honor, I will have photostatic copies made of it. This is my first experience with these reports. I have not read them.

May I have it marked for identification at this time?

THE COURT: In other words, you didn't prepare for the hearing.

MR. POSNER: Pardon, sir?

THE COURT: Do I understand you haven't prepared for this hearing?

(69) MR. POSNER: Is that the conclusion that Your Honor reaches?

THE COURT: That is what thought you just said.

MR. POSNER: I said I have not read this report produced by the witness.

THE COURT: It occurred to me you might have talked to the witness before the hearing.

MR. POSNER: I did not.

THE COURT: All right.

MR. POSNER: Nor to any of the other witnesses that have testified.

THE COURT: Let's move along.

(A five-page report by Mr. Gaynor to Mr. Jones dated June 17, 1977, marked Plaintiffs' Exhibit No. 8 for identification.)

(A four-page report by Mr. Gaynor to Mr. Coyle dated July 19, 1977, marked Plaintiffs' Exhibit No. 9 for identification.)

BY MR. POSNER:

Q. I show you what has been identified here as Plaintiffs' Exhibits 8 and 9 and ask you if they are summaries of the inspection that you made of Town Court Nursing Home.

A. The first report dated June 17, 1977, is a report that I sent to Mr. Jones because he was the gentlemen that had contacted me and asked me to do this peer review.

(70) I visited Town Court Nursing Home on June 13, 1977. I reviewed the survey team's report on pharmaceutical services. I checked the specific alleged deficiencies and did a complete review of all of the nursing stations, the medication care, the patients' charts and records, the prescriptions in the medication carts. I checked the deficiencies to see if they were isolated incidents or a pattern. I found that they were not a pattern, that they were isolated cases.

I made specific recommendations both in writing and also verbally to Mr. Lewis, the administrator. When I returned on July 18, I found virtually all of the recommendations and suggestions had been carried out, even those recommendations not covered by regulation.

For example, I have a personal feeling that the provider pharmacist and the consultant pharmacist should not be the same, even though the regulations permit it. I made that verbal observation to Mr. Lewis, and when I returned on July 18, I found that they have hired an outside consultant to serve as consultant pharmacist.

I recommended that the policy and procedural manual be revised, that they have a separate pharmaceutical manual; and this is being done.

I specifically checked all of the patients—I rechecked all of the patients—on July 18, where I had found discrepancies in the first visit; and I found in each case the (71) deficiencies had been corrected.

On the July 18 inspection, I found everything in good shape.

Q. Now, sir, all of your findings and recommendations contained in the report that you have in your hand which have been marked Plaintiffs' Exhibits 8 and 9—

A. Yes.

Q. —in your opinion, sir, in your observations on the two visits you made there, is there any danger in your opinion to the health and safety of patients or resident patients?

A. No danger to the patient.

MR. POSNER: Cross-examine.

Cross-Examination

BY MS. HATHAWAY:

Q. Mr. Gaynor, you said you made two visits to the facility. Did you say June of 1977?

A. On June 13 and July 18.

Q. 1977.

Do you have any personal knowledge about the conditions that existed in Town Court in the first week of March 1977?

A. No.

MS. HATHAWAY: Thank you.

THE COURT: Any questions?

MS. ANGELL: I have no questions.

THE COURT: You may step down.

(72) Thank you, sir.

(Witness excused.)

THE COURT: Could somebody straighten out a problem in my mind, provide a solution to a problem which exists in my mind? Exhibit P-4, the letter from HEW, in the third paragraph it states:

"On May 8-11, 1977, the Pennsylvania Department of Health performed a"—

MS. HATHAWAY: Typographical.

THE COURT: Everybody agrees it is March 8?

MR. POSNER: Yes, Your Honor.

MR. COYLE: I would like to represent to the Court the attorney, Mr. Coyle, has been identified as counsel for Town Court is not related to me nor do I know the gentleman.

THE COURT: You don't know he is a gentleman actually.

MR. POSNER: I had intended to call Dr. Finkelstein. Unfortunately or fortunately, sir, he is out of the country. He is a urologic surgeon; and I have his report, his written report.

I would like to have it identified as Plaintiffs' Exhibit 10, and I trust there might not be any objection to it being submitted.

THE COURT: All you have to do is offer it and see if anybody objects.

(73) MR. POSNER: Thank you.

THE COURT: Any objection to P-10?

MR. POSNER: I will show it to you first.

(Pause.)

THE COURT: Urologic or neurologic?

MR. POSNER: Urologist, sir.

(Pause.)

MS. HATHAWAY: Your Honor, I would like to ask counsel for plaintiff for Town Court for a stipulation that Dr. Finkelstein had no personal knowledge of the conditions that existed there.

THE COURT: During the first week of March of 1977?

MS. HATHAWAW: Yes, Your Honor.

MR. POSNER: I really don't know.

THE COURT: Well, I will assume that he doesn't know.

MS. HATHAWAY: Thank you.

THE COURT: On that basis, we will receive the exhibit for whatever it is worth, P-10.

(A seven-page report by Dr. Finkelstein to Mr. John W. Francks, Executive Director, Geriatric and Medical Centers, Inc., dated July 12, 1977, marked Plaintiffs' Exhibit No. 10 for identification and received in evidence.)

MR. POSNER: Mr. Zelkovitz.

EDWARD J. ZELKOVITZ, sworn.

(74) *Direct Examination*

BY MR. POSNER:

Q. Mr. Zelkovitz, by whom are you employed and in what capacity?

A. Geriatric and Medical Centers, and I am the Vice-President.

My areas of responsibility are quality control and government liaison.

Q. And how many nursing homes are you in charge of?

A. Well, there are 10 as of this date.

Q. Now, will you explain to His Honor the type of supervision that you give to the homes.

A. Well, I am in touch with the administrators to review the enforcement, carrying out of the policy and procedure manual, and to assure that the quality of health delivery of the patients is in accord with the manual. In other words, that there is quality of patient care being delivered.

Q. Mr. Zelkovitz, you are aware of a notice received from both the Commonwealth of Pennsylvania and the Department of Health, Education & Welfare?

A. Yes, I am.

Q. And you are aware of that funding, according to that letter, will be discontinued as of July 18, 1977?

A. Yes, I am.

Q. Assuming that funding has been discontinued, sir, can you continue to fund Town Court without that federal and state [aid]?

(75) A. Well, the total capacity of Town Court is 198 patients. As of this date, there are 177 Medi-

caid recipients. Without a computer, I would say 90 percent. If we remove 90 percent of the income of Town Court, it would be impossible for it to function.

Q. So your answer is you cannot function without that aid?

A. Absolutely not.

Q. Now, have you taken all the steps or shall I use the word "reasonable" or may I use the words "to assure quality continued operation" at Town Court?

A. Absolutely.

Q. Assuming, sir, that you are compelled to close because of lack of funding, is there sufficient facilities in the area to house the people that would not be able to be taken care of at Town Court?

A. I am not sure I understand your question. You are stating if the 177 Medicaid recipients were removed from Town Court—

Q. Where could they go?

A. Well, they could go home to their families or they probably could go to hospitals. I don't think there are any skilled care beds available for them.

MR. POSNER: Cross-examine.

Cross-Examination

BY MS. ANGELL:

Q. Mr. Zelkovitz, you indicate you are financially responsible (76) for the 10 facilities?

A. I don't understand your question.

Q. Well, you indicated that you speculate that you will be unable to operate Town Court by reason of termination of the funding. Do you have—

A. If you let me—

THE COURT: Excuse me. Just wait for the question. Listen to it carefully.

THE WITNESS: I want to make sure I understand it.

THE COURT: Be quiet, please.
Go ahead.

BY MS. ANGELL:

Q. You indicated you believe you would be unable financially to operate that institution. Do you have responsibilities in the financial area for Town Court?

THE COURT: Is that part of your job?

THE WITNESS: No.

BY MS. ANGELL:

Q. I see.

You indicated that you took all the necessary steps to, I believe, protect or insure the good health of the institution.

What did you do?

A. Well, we have instituted many new programs. We were involved in a very progressive program which is the assessment care evaluation program in cooperation with Health, Education & Welfare.

(77) This is a very new approach to record-keeping for the care of patients. We were involved in this program for some time.

The Department of Health, Education and Welfare commended us on our progress. We assigned a nurse to this area. We have increased our nursing staff. We have four nursing stations, a second, a third, fourth, and fifth floor. We are required to have one professional nurse at each station. In addition to that, we are required to have a DON. We have two professional nurses now at each station. We have supervisors in addition to the DON around the clock.

From the standpoint of programs, we now have the Medical Direction Consultant Committee, which is comparable to a medical staff in a hospital, which is composed of several doctors; and we have ongoing programs. We meet regularly to improve the services.

It is quite a large facility—it is caring for 198 skilled care patients—and it is quite a task. We have installed sentry tubs on each of the floors so that in bathing the patients have this automatic piece of equipment which the patients sit in, rises and puts them into the tub, and also a very, very modern approach to nursing home care.

I am trying to think of some other programs. We are constantly meeting and discussing programs and methods for improving patient care.

(78) Q. Any of these changes exist in March of 1977?

A. Yes. I have been with Geriatric & Medical Center since February of 1975. I would say since that time we have been in an ongoing, upgrading procedure at Town Court. It is a long, tedious process. It is very difficult, all kinds of problems, but

we are constantly improving or we are moving ahead all the time, we are working very hard.

It has been a very costly program. It has been a very difficult program and achieving success. I am very proud of what happened there, even up to March of 1977.

Q. I see.

Now, you indicated there were no available beds to your knowledge. Are there available beds in your other nine facilities?

A. Well, you say nine. There is one facility that is just about ready to be licensed. We have to exclude that since it is not licensed.

In our licensed existing facilities, no, there are not a large number of vacancies, one or two.

Q. What is the total capacity of that to be licensed?

A. 140.

Q. So there are 140 new beds once licensing is to be completed?

A. Yes.

THE COURT: Where is that?

THE WITNESS: At 63rd and Walnut Streets.

(79) If I might, Your Honor, I might change one comment that the Pennsylvania State Relocation Committee has already committed a number of people to the new facility. So that there are thousand of applicants, literally there are thousands of people, waiting for beds to be built or constructed. And this information I get from the Adult Services Agency of Philadelphia, the City of Philadelphia, the Regional Comprehensive Health Planning Council, and the Department of Welfare. There are just thousands of people who are waiting for placement of skilled care facilities in Philadelphia.

There are many, many facilities in Philadelphia about to be closed because of life safety code problems.

MS. ANGELL: I have no further questions.

THE COURT: Anything else?
(No response.)

BY THE COURT:

Q. Did you ever see the statement of deficiencies and plan of correction (indicating)?

A. Yes, sir.

Q. When did it come to your attention?

A. Well, it came to my attention probably a day after it had been received by the facility.

THE COURT: No further questions.

Redirect Examination

BY MR. POSNER:

(80) Q. Did you make any attempts to correct the conditions as they were stated in the alleged deficiencies?

A. Oh, yes. We went over these at great length with Mr. Lewis and other members of the Executive Committee. We spent a great deal of time in correcting these. We are very careful.

We consulted with the Department of Health on many occasions as to how these can be solved and the proper way of answering the deficiencies. So we wanted to make sure we did everything properly.

MR. POSNER: Thank you very much, sir. That is all.

THE COURT: You may step down.

(Witness excused.)

MR. POSNER: That is my case, sir.

THE COURT: All right. Perhaps somebody else has a case.

Anything further from the other plaintiffs?

MR. COYLE: No, sir.

THE COURT: Anything from the defendants?

MS. ANGELL: Excuse me, Your Honor. May I have a second to speak with Mrs. Hathaway?

(Pause.)

MS. ANGELL: Your Honor, may counsel see you at side-bar a moment please, sir?

THE COURT: Why not. Do you want to meet in (81) chambers for a few minutes?

MS. ANGELL: O.K.

THE COURT: Suppose we recess into chambers.

(Conference in chambers off-the-record from 4:30 p.m. until 4:35 p.m.)

(The following took place in open court at 4:35 p.m.)

THE COURT: Proceed.

MS. HATHAWAY: Your Honor, I would like to call Gerald Szuc, the Director of the Division of Health Standards and Quality.

THE COURT: Fire away.

GERALD SZUC, sworn.

Direct Examination

BY MS. HATHAWAY:

Q. Mr. Szuc, would you give us your title, please?

A. My title is Regional Director for the Bureau of Health Standards and Quality. It has a regional office in Philadelphia.

Q. Can you describe for us how that relates to long-term care standards and enforcement?

A. Yes. Under a recent reorganization order by the Secretary of HEW, a number of health components dealing with the health provider certification program were pooled together.

(82) The Office of Long-Term Care Standards Enforcement was one of the component parts of HEW brought into a new organization called the Health Care Financing Administration.

The Bureau that I represent is a successor organization to the Office of Long-Term Care Standards Enforcement.

Q. And can you tell us who has certification authority in Region 3 for skilled nursing facilities?

MR. POSNER: I am sorry, I didn't hear the question.

THE COURT: She wants to know who had certification authority in this region.

THE WITNESS: That authority is vested in myself as regional director.

BY MS. HATHAWAY:

Q. Would you give us a short explanation of the relationship between your Bureau and your state survey agency with regard to certification of skilled nursing facilities?

A. Without going into a laborious explanation, it basically involves a contract between the Secretary of HEW—we are his agents—and the State of Pennsylvania, specifically with the Governor, which is delegated down to the Secretary of Health, and that goes down to another component within the Health Department that deals with surveys for Medicare certification purposes.

And it is a contractual arrangement. We fund the state agency to carry out surveys on a scheduled basis or on a special request basis, and we provide the funds to the State to (83) perform the various surveys.

That is it very briefly.

Q. Would you summarize the events leading up to the letter of May 17, of Town Court Nursing Home notifying them that their provider agreement would not be renewed?

A. All right. I don't want to bore the Court with all of the administrative—

THE COURT: Just answer the question, please.

THE WITNESS: We terminated it from the program; that is, I did not renew the provider agreement with the facility on October 31, 1974, on the basis of many standards not being met.

On December 2, 1975, a health survey was performed by the State agency and was not approved—their recommendation was not approved—for renewed participation in the program because of some significant deficiencies that continued to exit at the facility.

On April 14, 1976, the State agency—this is the State survey agency that I referred to earlier —again recommended a certification that this facility be participated in the Medicare program.

On May 11, 1976, the Department of Health, Education & Welfare notified that the agreement had been approved and that a cancellation clause would be made of July 31, 1976.

On July 19 and 20, 1976, the HEW regional office itself—

(84) THE COURT: Excuse me. What is that about July 31, 1976?

THE WITNESS: That was the date in which the provider agreement was to be cancelled pending correction of all of the deficiencies.

BY THE COURT:

Q. Notified them on May 11 that the agreement was approved by HEW?

A. Yes, I did, or we did, the office did.

Q. But it was going to be cancelled on July 31?

A. Pending correction of deficiencies noted during the survey.

Q. During what survey, the April 14 survey?

A. Yes.

Q. That undoubtedly makes sense to others, but it doesn't make any sense to me.

A. Should I continue?

Q. Whatever you want to do.

A. On July 19 and 20, HEW regional office performed a health care or health survey and found the facility out of compliance with the conditions.

On November 22 through 24, a request was made of the State survey agency to perform another survey to find if the facility was now in compliance, and the State agency finding indicated that it was out of compliance.

MR. POSNER: I will object to that and ask that be (85) stricken, sir.

THE COURT: Objection overruled. Motion denied.

THE WITNESS: On March 8 through 11, 1977—

THE COURT: Anything in between July 19 and 20 and March 8?

THE WITNESS: Not that I have in a quick review of the record.

MS. ANGELL: May we specify which State agency is performing these?

THE WITNESS: Yes. It would be the State survey agency, which is the Health Department.

MS. ANGELL: I see. Thank you.

THE WITNESS: On March 8 through 11, 1977, another survey was conducted by the State survey agency and again the conditions of participation were found out of compliance. At that point in time the State Health Department—

THE COURT: Excuse me.

BY THE COURT:

Q. Are you talking about this report here (indicating)?

A. Yes, I am, Your Honor. And at that point in time based on the survey that you have in hand the State agency recommended that the provider agreement not be renewed.

Q. Well, now just as a matter of curiosity, where does this say they are not in compliance with anything?

A. There is another form. It is a form letter actually (86) called the certification transmittal form, which bears the signature of a State representative, saying that it is not in conformance. I don't believe you have that in your hand.

Q. Certification and transmittal to whom?

A. It is just an official document called certification and transmittal, which the State sends to us and recommends a certain action. In this case they recommended that the provider agreement not be renewed.

Q. And they did that at the same time as the original survey or after they had the provider?

A. That would be the last stage, Your Honor, after the survey was conducted on March 8 through

11. Then the findings were written up and what is called the list of the deficiencies which you have in your hand. Then that whole package is then transmitted to us with a recommendation for non-continuance of the provider agreement.

Q. Notwithstanding the fact the provider was supposed to provide a plan of correction and hadn't done that yet because he hasn't had a chance; is that right?

A. The provider is given an opportunity—I have to look at the date of the certification and transmittal form, which I don't have in front of me. That would indicate when the form was submitted to the regional office.

But as a matter of procedure the facility is given 10 days to respond to the list of deficiencies, which would (87) be placed on the form that you have in your hand, sir, and they were given the opportunity to come up with a plan of correction except they did not.

Q. Well, what good would it do to come up with a plan of correction if you already had a recommendation to terminate?

A. They were given an opportunity to come up with compliance; they did not.

THE COURT: Let's find out.

Do we have a date on the transmittal?

(A one-page document concerning Town Court Nursing Center entitled "Medicare/Medicaid Certification and Transmittal" was marked Defendants' Exhibit No. 5 for identification.)

(A 68-page report concerning Town Court Nursing Center entitled "Medicare/Medicaid Skilled Nursing Facility Survey Report" was marked Defendants' Exhibit No. 6 for identification.)

MS. HATHAWAY: This is the certification and transmittal.

(Defendants' Exhibit No. 5 was handed to the Court by Ms. Hathaway.)

THE COURT: I will note I have been handed an exhibit called D-5, which purports to be the certification and transmittal of, presumably, the document referred to by the witness.

THE WITNESS: That is correct.

THE COURT: It bears a stamp showing receipt by (88) the licensing, scheduling and tracking unit, Division of Long-Term Care, Department of Health, of April 4, 1977.

I will note that the date on which the provider, after a plan of correction, was effective April 14, 1977.

MR. POSNER: I don't have a copy, sir. I assume I will be furnished with one at a later time.

THE COURT: You are not missing a thing.

MR. POSNER: Thank you, sir.

THE COURT: It doesn't say anything except recommend non-renewal of the agreement.

I will note it bears a typed date by the surveyor, who has been named, the date of March 11, 1977.

Proceed.

THE WITNESS: The conclusion simply is we did not review the provider agreement because it failed—the facility failed to maintain compliance with the conditions of participation for Medicare participation and that based on the history of the continuous non-compliance of the facility the decision was made not to renew the provider agreement at that point in time.

MS. HATHAWAY: Your Honor, this is Defendants' Exhibit 6. This is the survey report itself.

BY MS. HATHAWAY:

Q. Mr. Szuc, can you identify this for me, please?

A. The exhibit that I have in my hand is called "Medicare/Medicaid Skilled Nursing Facility Survey Report," and what it (89) contains is a listing of all of the standards that a nursing home is supposed to meet. It marks what conditions, what standards are or are not met at the time of survey, which at this time was March 8 through 11, 1977.

Q. Where are those standards derived from?

A. They are contained in federal regulation, and as a matter of fact, the wording contained in this form for the most part is an exact wording of the regulations themselves and—

THE COURT: Excuse me. This is absolutely meaningless. You have got them stapled together topsy-turvy. Some are upsidedown,

backside to, inside out. It is impossible to follow this exhibit.

I will note, for example, it is a sort of a check sheet and shows some things as the standards being met and others not being met.

THE WITNESS: Yes, Your Honor.

BY THE COURT:

Q. Do I understand if any one those standards was not met that would show non-compliance; is that right?

A. There is an evaluative process where all the standards—excuse me, please—there are three levels of items listed on here. If you look on the first page it says: "Compliance with federal, state and local laws." That is technically called a condition—

Q. That says: "Standard: Conformity with other federal, (90) state, and local laws." "Not met." It lists over on the right a whole bunch of things, including two patients' records reviewed and lacked yearly CBC and urinalysis reports.

If there was a state report that requires that, I would be amazed.

Another one, sprinkler inspection with a date. I don't know whether that should have been inspected more recently or wasn't inspected properly or what.

F. 14 the written agreement with the ICL facility has expired, and everybody seems to agree there is no requirement of law there be a written agreement.

I don't understand.

MS. STILLER: Your Honor, that is a misstatement by a witness. There is a requirement by state law.

BY THE COURT:

Q. What does "sanitation" mean?

A. What page is it, Your Honor, on?

Q. Still on the first one: "Standards: Conformity with other federal, state, and local laws," which is related to fire and safety, sanitation, communicable and reportable diseases, post-mortem procedures, and other relevant health and safety requirements, Page 2.

A. What is your question, I am sorry?

Q. My question is: What does it mean?

A. Conformity with other federal, state, and local laws.

(91) Q. When it says "sanitation, 12/3/76," what does that mean? Does that mean there is a law that says they have to be sanitated on December 3?

A. Your Honor, I do not know.

Q. I don't either.

What is "fire alarm inspection, 2/24/77"?

A. I am assuming that was—I am assuming this without knowing—that the fire alarm inspection was last performed on that date by a local inspector.

Q. In other words, there is no way of telling when she said—or when the inspector said—"Not met" over on the left you don't know in what respect they are not met by looking at this?

A. Except where it is annotated, for example, at the bottom of the same page, refers to two patients' records which were reviewed.

Q. CBC and urinalysis reports.

A. I am not sure what the CBC is.

Q. Does that mean there is a state law—federal, state, or local law—that requires that the records have urinalysis reports in them?

A. I would have to ask someone. I don't do the inspections, Your Honor. I don't have a specific knowledge. It is the surveyor herself who has knowledges of the state and local laws, would be able to tell that.

BY MS. HATHAWAY:

(92) Q. The facility received its notification of non-renewal on May 17. Did it file a reconsideration request?

A. It did file a reconsideration request, yes.

Q. Have you acted upon that request?

A. The documentation that we received—

THE COURT: Just answer the question, please.

THE WITNESS: Yes, we have.

BY MS. HATHAWAY:

Q. Have you sent a formal notification of the results of the reconsideration?

MR. POSNER: I am sorry, what was the question? You are facing the witness, and I can't hear you. I am so sorry.

BY MS. HATHAWAY:

Q. Have you sent a formal notification of reconsideration?

A. No, we have not.

Q. Why not?

A. We were requested by the nursing home to hold up any formal decision pending receipt of a number of materials pertinent to their case.

Q. Have you received those materials?

A. We have received some as of the 20th of July. We have to my knowledge not received all of the materials, no.

Q. And can you summarize for us the factors which led you to-make a decision not to review the provider agreement for this facility?

(93) MR. POSNER: Objected to, sir.

THE COURT: Objection overruled.

THE WITNESS: The factors leading up to the decision are based on a long history of non-compliance over a considerable period of time where we or the State agency has gone in and continued to find the facility out of compliance with some very serious conditions.

BY THE COURT:

Q. Name one or two.

A. The supervision by physicians and nursing—

Q. It says "Supervision of physicians" in the report.

A. This refers to making sure that the physicians are properly supervising the patients' care.

Q. What does that mean? The problem throughout here is it is all general categories without any specifics.

A. The specifics should be contained, Your Honor, in the plan of correction.

Q. Well, how can you have a plan of correction when it says, "The governing body and administrator

or not enforcing rules and regulations relative to the health care and safety of the patients as evidenced by lack of supervision of physician services, nursing services, and medical records"? Now, how can anybody respond to that except in the general way which they did?

A. That is explained to the parties during the time of the survey and the fact that they are able to come back with a plan (94) of correction, which is the righthand side of the form, which indicates that they do understand what was said.

Q. The point I am getting at is, you listed this as a very serious violation. Yet you don't give any specifics in the charge, and they don't give any specific in their plan obviously. And I still don't know what the serious deficiency is. What are the—

A. Your Honor—

Q. —serious aspects of it?

A. I must be honest. I have not worked on this case myself. I am in charge of the regional office. I was appointed to that position about a month ago. I was not involved in the decision-making process at the time the determination was made.

THE COURT: Then I will reverse my previous ruling and sustain the objection. If you didn't make the decision, obviously you can't be questioned.

BY MS. HATHAWAY:

Q. Mr. Szuc, will you make the reconsideration determination?

A. The way—I have the authority to make the reconsideration decision. However, presently the

normal way of handling that would be to have one of my division directors would make the initial decision and I would reserve the right to make the reconsideration decision in this case.

However, because I do not have a division director to be fair to the facility the way I would handle the (95) reconsideration is to send it to our headquarters in Balitmore and ask them to make a completely independent review of the case.

Q. I have one final question.

Do you have authority to issue a provider agreement if there are conditions of compliance, conditions of participation out of compliance?

A. I do not have that authority.

MS. HATHAWAY: Thank you. That is all.

THE COURT: Any questions?

Cross-Examination

BY MR. POSNER:

Q. Do you know who composed the survey team that made this inspection, sir, of your own knowledge?

A. Of my own personal knowledge, I do not know.

Q. Do you know their qualifications of your own personal knowledge?

A. Since I don't know the individuals specifically who conducted the survey, the answer is no.

THE COURT: It says here "Claire Richards; title, registered nurse."

Over on the right the State survey agent is Jay E. Laff, Director, Division of Long-Term Care. I don't know what that means.

At least one of them was a nurse.

THE WITNESS: Yes.

(96) BY MR. POSNER:

Q. May I ask you, sir, you have been on the job for one month you said?

A. That is correct, sir.

Q. You knew this case was in progress, did you not, sir?

A. During the month?

Q. Yes.

A. I would have been aware of it during the past couple of weeks, yes.

Q. Did you decide to go down to visit Town Court Nursing Home in order to satisfy yourself as to the conditions that might exist there and make an inspection in order that you in your own mind would know what you were talking about in this case?

A. That was not necessary, sir.

Q. Who is Robert J. Taylor?

A. Robert J. Taylor was former Director of the Office of Long Term Care Standards and Enforcement. He is presently one of my regional—one of my directors.

Q. As of May 17, 1977, was he authorized to act for your department?

A. He was.

Q. As of July 19, 1976, do you know whether or not he was authorized to act for the department?

(Pause.)

A. The reason I hesitate some is redelegations were made on (97) or about that time. I am not sure of the exact date, but I believe he did not at that point in time. I will have to verify that.

(A one-page letter from the Department of Health, Education and Welfare to Town Court Nursing Center, dated July 19, 1976, was marked Plaintiffs' Exhibit No. 11 for identification.)

BY MR. POSNER:

Q. I show you what has been described—

A. Excuse me, can I answer for clarification? Is that in order?

THE COURT: Sure. What is the problem?

THE WITNESS: I did know—did you say July 19, 1976, or '77?

BY MR. POSNER:

Q. '76.

A. I do know. I have knowledge of that. He did have the authority on July 19, 1976. I thought you meant '77, I am sorry.

Q. Now, sir, as of July 19, 1976, were you aware that Mr. Taylor pursuant to his authority addressed a letter to Town Court Nursing Home (handing to witness)?

A. I was not aware of it.

Q. And you have it in front of you in the form of P-11?

A. Yes.

Q. Now, sir, may I refer you to two paragraphs of that letter particularly. One is the third paragraph and then the fourth (98) paragraph.

Q. Would you be good enough to read it?

A. Yes.

"April 14, 1976, is the earliest possible effective date for your agreement. On that date a survey was performed which found you had corrected all of the deficiencies which had caused the involuntary termination of your facility, which took effect October 31, 1974."

The fourth paragraph:

"Surveys prior to the April 14, 1976, survey found that the deficiencies which had caused your termination from the program had not yet been fully corrected. Section 1866(c)(1) of the Social Security Act and Regulation 20 CFR 405.616 precluded your readmission to the program until the reason for your termination had been removed."

That is the end of the fourth paragraph.

MR. POSNER: Thank you. That is all.

No further questions.

THE COURT: Recessed until tomorrow morning at 10 o'clock.

(Adjourned at 5.p.m. until 10 o'clock Wednesday, July 27, 1977.)

(99) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

Philadelphia, Pennsylvania
July 27, 1977

Before Hon. John P. Fullam, J.

PRELIMINARY HEARING

Appearances:

Fox, Rothschild, O'Brien & Frankel by Nathan L. Posner, Esq., Jeffrey B. Albert, Esq., for Plaintiff Town Court Nursing Center, Inc.

(100) Saul Levit, Esq., for Additional Plaintiffs

Faith M. Angell, Esq., Deputy Attorney General, for Secretary of Public Welfare—Commonwealth of Pennsylvania

Margaret Hathaway, Esq., Assistant Attorney General, for Secretary of the United States—Department of Health, Education and Welfare, Defendant

Jennifer A. Stiller, Esq., Assistant Attorney General, for Department of Health—Commonwealth of Pennsylvania

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(101) (Commenced at 10:10 o'clock a.m.)

THE COURT: Anything further in the Town Court matter?

MR. LEVIT: Good morning. I am Saul Levit. I am here for William Coyle. He teaches some mornings.

THE COURT: I hope he teaches students as well as some mornings.

Anything from the defense?

MS. ANGELL: Excuse me, Your Honor, I think counsel would like an opportunity to see you in chambers.

THE COURT: All right.

(Conference in chambers at 10:11 o'clock a.m.)

(Discussion off the record.)

(The following on the record at 10:50 o'clock a.m.)

THE COURT: I will note for the record that all of the exhibits which were referred to by the witnesses and identified yesterday have been received in evidence and will be deemed part of the record.

(Plaintiffs' Exhibits 1 through 11 and Defendants' Exhibits 1 through 6 received in evidence.)

THE COURT: I will note further that I have at counsel's request met with them in chambers and they in turn have met with each other, and it is my understanding that the Order which is about to be entered, while not consented to by any of the defendants, probably is not terribly inconsistent with their views as to an appropriate disposition.

(102) Specifically on the basis of the evidence which has been presented, it is my feeling that the harm which would be done to the patients as well as to the corporate plaintiff by the cessation of funding would be devastating and irreparable whereas there can be serious question as to the jurisdiction of this Court with respect to the merits of the controversy. I believe this Court does have jurisdiction for the limited purpose of maintaining the status quo during the period when the administrative action on the application for reconsideration is undergoing its routine processing and completion.

Since it is clear on the record that the continuation of patients in that nursing home during that period would not be inconsistent with the continued health and welfare of the patients—in other words, none of the alleged complaints bear on any serious safety or health hazards—under all those circumstances the following Order is entered:

That the Temporary Restraining Order heretofore entered shall remain in effect pending completion of administrative action on the pend-

ing application for reconsideration and until the defendants give to the plaintiffs at least five days' written notice of their intention again to terminate funding.

It is understood that during this period the funding will not be curtailed or cut off and that the defendants will not systematically or otherwise intentionally remove patients from the home except in cases where that is the patient's own voluntary (103) choice or in cases of medical necessity. In short, there will be attempt to simply transfer patients for the sake of putting them in some other place rather than this.

And it is understood that there will be no prohibition during this interim period against placement of additional patients at the home.

I believe that covers it, does it not?

MR. POSNER: It is satisfactory to me, sir.

THE COURT: O.K. Good luck with the administrative review. I hope it proceeds expeditiously.

Thank you all.

(Concluded at 10:56 o'clock a.m.)

226

1526-36 Lombard Street COBBS CREEK NURSING HOME Wolfgang Rapp, Architect

P-1

PLAINTIFFS' EXHIBIT NO. 2 290½a

P-2

PLAINTIFFS' EXHIBIT NO. 3

Commonwealth of Pennsylvania
Department of Public Welfare
Harrisburg, Pennsylvania 17120

May 20, 1977

Office of
Medical Programs
Certified Mail Number: 627088

Mr. Donald Lewis
Administrator Provider Number: 0400357

Town Court Nursing Center
1526 Lombard Street
Philadelphia, Pennsylvania 19146

Dear Mr. Lewis:

The Department of Health, Education, and Welfare (HEW) has notified the Department of Public Welfare that your participation under Title XVIII of the Social Security Act, 42 U.S.C. §1395cc, Medicare, will terminate effective June 18, 1977. Because the Medicare Program has terminated your participation, the Department of Public Welfare has no alternative but to likewise terminate your participation under the Medical Assistance Program. The Federal regulations, 45 C.F.R. §249.33 (a) (9) , require that a State medical assistance plan must:

> "Provide that in the case of skilled nursing facilities certified under the provisions of title XVIII of the Social Security Act, the term of a provider agreement shall be subject to the same

terms and conditions and coterminous with the period of approval of eligibility specified by the Secretary pursuant to that title, *and upon notification that an agreement with a facility under title XVIII of the Act has been terminated or cancelled, the single State agency will take appropriate action to terminate the facility's participation under the plan.* A facility whose agreement has been cancelled or otherwise terminated may not be issued another agreement until the reasons which cause the cancellation or termination have been removed and reasonable assurance provided the survey agency that they will not recur." (emphasis supplied)

Because of the requirements of HEW, your facility must be terminated from participation in the Medical, Assistance Program effective June 18, 1977.

Effective June 18, 1977, Town Court Nursing Center may no longer receive payments under the Medical Assistance Program for skilled nursing care or for services provided to Medical Assistance patients. This is due solely to the fact that HEW has notified us of your Title XVIII termination.

Should you wish to present evidence that HEW has not decided to terminate your facility from participation in the Medicare Program, you may appeal in writing to the Department of Public Welfare, and a hearing will be scheduled promptly to decide that issue. The basis for HEW's decision to terminate will not be at issue in any appeal to this State agency, although you may wish to raise such issue before HEW.

Your appeal from our decision to terminate you from the Title XIX Program because of the Title XVIII action, must be *received* by the DPW Hearings and Appeals Unit, 318 Capitol Associates Building, Harrisburg, Pennsylvania 17120, no later than May 31, 1977. An appeal which is not received by this date must be dismissed as untimely. Upon receipt of your appeal, the Hearings and Appeals Unit will inform you of the date, place and time of the hearing.

Should your facility need assistance in relocating the Medical Assistance patients to alternate facilities, please contact this office.

Any subsequent certification of your facility under the Medical Assistance Program is contingent upon total compliance with Federal requirements, including correction of those deficiencies which resulted in Town Court Nursing Center's termination under the Title XVIII, Medicare Program.

Sincerely yours,

(s) Glenn Johnson
Glenn Johnson
Director
Bureau of Medical Assistance

PLAINTIFFS' EXHIBIT NO. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Region III

3535 Market Street
Philadelphia, Pennsylvania

May 17, 1977

Office of the
Regional Attorney
Mailing Address
P. O. Box 13716
Philadelphia,
Pennsylvania 19101

J. McMahon
L. Davis
E. Otter
S. Russo
W. Wells
W. Shlegel
A. Justin
J. Smith
G. Grimes

Town Court Nursing Center
1526 Lombard Street
Philadelphia, Pennsylvania 19146

RE: Provider Number 39-5337

Gentlemen:

The Medicare Program established under Title XVIII of the Social Security Act, as amended, requires that a provider agreement with a skilled nursing facility shall, in accordance with section 1866 (a) of the Act, 42 USC 1395cc, be for a specified term not to exceed twelve months, with a fixed expiration date. Your facility's agreement expired at the close of April 30, 1977.

In order to participate in the Medicare Program, a skilled nursing facility must meet the statutory requirements contained in section 1861 (j) of the Act, 42 USC 1395 x (j), as well as all other health and safety requirements established by the Secretary in subpart J, part 405, title 20 of the Code of Federal Regulations. A participating skilled nursing facility is required to be in compliance with all of the eighteen conditions of participation for such facilities contained in subpart J.

On May 8-11, 1977, the Pennsylvania Department of Health performed a survey of your facility. That survey found that your facility does not comply with seven of the eighteen conditions of participation. The seven conditions not being complied with are:

II. Governing Body and Management	(405.1121)
III. Medical Direction	(405.1122)
IV. Physician Services	(405.1123)
V. Nursing Services	(405.1124)
VIII. Pharmaceutical Services	(405.1127)
XIII. Medical Records	(405.1132)
XV. Physical Environment	(405.1134)

Your facility's failure to comply with these conditions of participation precludes renewal of your agreement. Renewal is also precluded by the fact

that your facility has failed to maintain compliance with numerous standards which had previously been determined to be met. Please refer to 20 CFR 405.-1908 (d).

As you know, the Town Court Nursing Center's participation in the Program was terminated effective October 31, 1974 because of deficiencies which jeopardized patient health and safety. The facility was subsequently readmitted to the Program effective April 14, 1976, on the strength of a survey performed by the State Department of Health on that date. The April 14, 1976 survey found the facility in full compliance with the health care standards included in the conditions of participation. The survey performed on March 8-11, 1977 found a total of forty standards unmet. Please see attached survey and plan of correction.

As a result of the March 8-11, 1977 survey, the State Department of Health has recommended that your facility's agreement not be renewed. Because of the facility's failure to comply with seven conditions of participation, and because of its failure to maintain compliance with standards which were previously met, the State Agency's recommendation has been accepted, and the agreement with Town Court Nursing Center will not be renewed.

This letter constitutes your official notice that we are terminating your facility from participation in the Medicare Program effective June 18, 1977. If you believe that all deficiencies have now been corrected, please advise this office within ten working days.

No payment for services rendered in your facility after June 18, 1977 may be made under the Medicare Program, except that payment may be made for inpatient skilled care services rendered to Medicare beneficiaries admitted to your facility before June 18, 1977, and such payment is specifically limited to services furnished through the close of July 17, 1977. Please notify all Medicare beneficiaries admitted before June 18, 1977 that no payment will be made for such services rendered after July 17, 1977. A list showing the names and health insurance claim numbers of beneficiaries in your skilled nursing facility on June 18, 1977 should be forwarded to the Regional Medicare Director, Bureau of Health Insurance, Department of Health, Education, and Welfare, Post Office Box 8788, Philadelphia, Pennsylvania 19101.

We will arrange for the publication of a notice of the non-renewal of your agreement in a newspaper servicing the locality in which your facility is located. You will be advised of the publication date of that notice.

If you believe this determination is not correct, you may request that it be reconsidered. If you want a reconsideration of the decision, you must request it not later than sixty (60) days from the date of receipt of this notice. The request should state why you believe the determination is incorrect and should be accompanied by any supporting evidence and arguments you wish considered. The request for reconsideration should be directed to Robert J. Taylor, Director, Office of Long Term Care Standards En-

forcement, Post Office Box 13716, Philadelphia, Pennsylvania 19101.

Section 246(a) of Public Law 92-603 requires uniform standards for skilled nursing facilities under Title XVIII (Medicare) and Title XIX (Medicaid). Any facility receiving payment under either program must satisfy all the requirements contained in section 1861 (j). Since the Town Court Nursing Center does not comply with all requirements therein and we cannot renew your agreement for Title XVIII, we are forwarding a copy of this letter to the Title XIX State Agency.

Sincerely yours,

Benjamin M. Guy
Acting Regional Director

By: (s) Robert J. Taylor
Robert J. Taylor, *Director*
Office of Long Term Care
Standards Enforcement

Copy to:
Dr. Abdellah
OLTC Div. of Standards
Enforcement Division Coordination
Mr. Wortman
Mr. Alicks
MSA-CO
MSA-RO
Intermediary
BHI-RO (2)
Regional Attorney
Pittsburgh District Office (East)

OCR-RO
State Survey Agency
Single State Agency
Provider File
Reading File

PLAINTIFFS' EXHIBIT NO. 5

RE: TOWN COURT NURSING CENTER
1526 Lombard Street
Philadelphia, Pa. 19146

ANALYSIS OF STATEMENT OF DEFICIENCIES
RESULTING FROM SURVEY CONDUCTED
MARCH 8-11, 1977

PROF. TOBIAS BUND, J. D.
Management Consultant
4705 Henry Hudson Pkwy.
Riverdale, N.Y. 10471
TEL: (212) 796-4007

Dr. Bund is Professor of Health Care Administration and Director, Allied Health Programs at the French & Polyclinic Medical School in New York City. He is also a member of the Faculties of the Rutgers University, New Jersey, the School of Business Management and the School of Continuing Education of the University of Connecticut, the Institute of Health Care Administration of C. W. Post College, Long Island, New York and of Elizabethtown College, Penna. He has appeared as Guest Lecturer at the Columbia University School of Public Health & Administrative Medicine in New York, Douglas College in New Jersey, Quinnipiac College in Connecticut and many other well-known educational institutions.

He has been actively engaged in the field of Public Health for more than twenty-five years and serves as a Consultant to all types of health facilities—hospitals, nursing homes, senior citizen projects, intermediate care and health related facilities and other health related organizations.

For many years, he served as Professor of Public Health Law, Mortuary Law and Applied Psychology at the McAllister Institute in New York City; as Chairman of the Law Committee of the National Ass'n of Schools of Mortuary Science; as a Consultant to the Funeral Service Industry and as Special Legal Consultant to the Office of the Medical Examiner of the City of New York.

At the present time, Dr. Bund serves as a member of the Council of the Pan American Medical Ass'ns. Sections on Hospital Administration and Geriatrics; as a Lecturer for the New York and New Jersey State Departments of Health; as Consultant Examiner for the New York State Civil Service Commission; as Executive Secretary of the Society of Licensed Nursing Home Administrators of New Jersey; as Consultant to the Therapeutic Activists Section of the New Jersey Recreation and Parks Association and as a Consultant to the many religious, non-profit and proprietary organizations engaged in the building, maintenance and operation of health care facilities throughout the East Coast.

Dr. Bund has appeared as Guest Speaker at meetings of civic, educational, charitable, religious, political, professional and governmental agencies, organizations and societies.

RE: TOWN COURT NURSING CENTER
1526 Lombard Street
Philade'phia, Pa. 19146

ANALYSIS OF STATEMENT OF DEFICIENCIES RESULTING FROM SURVEY CONDUCTED MARCH 8-11, 1977.

INTRODUCTION:

This Analysis of the Statement of Deficiencies was made after a detailed survey of the above named Facility conducted by the undersigned during the period June 4-7, 1977 inclusive.

Each section of the Statement will be analyzed in the same sequence as it appears thereon for purposes of ready reference.

CONFORMITY WITH FEDERAL, STATE AND LOCAL LAWS:

1. The Regulation herein cited (405.1120 (c)) makes no reference to any requirement that there be a written agreement with an Intermediate Care Facility. The Regulation cited refers solely to the adoption by the Governing Board of various policies.

2. Again, the Regulation cited makes no reference to the materials cited as a deficiency. Regulation 405.1120 (c) deals solely with the adoption by the Governing Board of various policies.

COMMENT: A review of the Administrative Policies and Procedures indicates that proper policies as required by the aforesaid Regulation were adopted

by the Governing Board of this Facility. There appears to be no relationship between the alleged deficiencies and the stated Regulation.

GOVERNING BODY AND MANAGEMENT:

3. The stated deficiency hereunder is and followed by the citing of Reg. 405.1121 (c), (e) and (k) is evidently a conclusion drawn by the individuals responsible for drafting the Statement of Deficiencies.

A reading of each of the sub-paragraphs of the cited Regulation indicates that the Facility has complied with each of them:

Standard (c) requires the governing board to adopt by-laws and policies.

Standard (e) requires the appointment of an Administrator with overall responsibility for the operation of the Facility, and

Standard (k) requires the adoption of a Patients' Bill of Rights.

GOVERNING BODY AND MANAGEMENT:

COMMENT: A review of the Administrative Policies and Procedures of the Facility indicates that all of the foregoing Standards had been complied with. The Manual contained By-Laws and other Policies relating to the operation of the Facility and same had been adopted by the Governing Body. An Administrator was duly designated by the Governing Body and given overall responsibility for the operation of the Facility. A Patients' Bill of Rights was contained in the Administrative Policy and Procedure Manual.

Citing "lack of supervision of physician's services, nursing services and medical records" as evidence that the Governing Body and Administrator are not "enforcing rules and regulations" has, again, no relationship to the Regulation cited. It does, however, indicate to this Reviewer the attitude with which the Statement of Deficiencies were written.

4 (a) and (b): At the time of your Reviewer's survey, a review of the files of the Facility's employees indicated that Reg. 405.1121 (g) had been fully complied with by the Facility.

5. Documentation relative to an In-Service Program relating to confidentiality of patient information was on file at the Facility. Such documentation bore the date 12/27/76.

COMMENT: Your Reviewer questioned various staff members of the Facility at the time of his survey as to In-Service programs conducted by Administration and various Department Heads and was advised by such staff members that they were participating in In-Service programs and that the subject matter relative to Patient's Rights and confidentiality had been discussed with them as well as a host of other topics of a general nature and topics and subject matter relating to their specific departments and work assignments.

6. At the time of your Reviewer's survey, a policy and procedure relative to informing patients of related charges had been adopted by the Facility.

A policy and procedure was in the midst of preparation at the time of your Reviewer's survey rela-

tive to providing patients with a quarterly accounting of financial transactions.

6 (a)-(j): Interviews with staff members on various shifts were held by your Reviewer. Staff members advised that they were constantly being reminded by their Supervisors as to the importance of treating patients with dignity and respect. The staff also advised that they had received In-Service programs concerning this very subject matter on more than one occasion.

COMMENT: One of the major problems of the nursing home industry is and continues to be that of obtaining adequate personnel on the lower staff levels.

PHYSICIAN SERVICES:

7. At the time of your Reviewer's survey, new forms had been adopted which would include the individual rehabilitative potential of the patient and were, in fact, already on some of the patients' charts reviewed.

Procedures were being developed to implement new policies which were adopted by the Medical Director Consultant Committee at the time this review was made.

COMMENT: It is interesting to note that while the items mentioned under the caption "Physician Services" as deficiencies, which come under Regulation 405.1123, were so delineated, reference to other Standards of other numbered Regulations are also listed. Again, it is evident to this Reviewer that the

individuals comprising the Survey Team were making a "point" of building a record in the instant matter.

NURSING SERVICES:

8. Indicating that Regulation 405.1124 (a) requires a written procedure cleaning combs and brushes to be available and citing the absence of such as a deficiency under such Regulation is completely and totally without foundation without stretching the imagination to an unreasonable degree.

COMMENT: Your Reviewer has studied, analyzed and reviewed approximately 100-150 Policy and Procedure Manuals for all types of health care facilities including but not limited to hospitals, extended care facilities, skilled nursing homes, intermediate care facilities, health related facilities, etc. In not one of the aforesaid Manuals has your Reviewer ever encountered a procedure for cleaning combs and brushes.

It should be noted that the deficiency cited does not even indicate that an unclean comb or brush was observed at the time of the Survey.

9. Neither Standard (b) or (g) of Regulation 405.1124 require the use of Assignment Sheets and no reference is made therein to same. Standard (b) relates to the duties of the Charge Nurse while Standard (g) deals with Administration of Drugs.

COMMENTS: While some facilities use Assignment Sheets, there is no mandated regulation for the use of same. Certainly, the absence of an assignment

sheet for staff has absolutely nothing to do with the regulations relative to the administration of drugs by individuals properly properly permitted to do so.

10. (a)-(f): The deficiency cited herein states that there was "inadequate" documentation on patient care plans and several instances (paragraphs a-f) are presented as proof thereof.

COMMENT: At the time of your Reviewer's survey, patient care plans were in the process of being updated by the various professional disciplines required to be concerned therewith. Various records, such as nursing care plans, activity program evaluations, dietary counselling interviews with patients, were being reviewed and updated, Similarly, social service records pertaining to patient needs were being reviewed and up-dated. Documentation was available to your Reviewer which indicated that physicians had been contacted and advised of the necessity of providing short and long-term goals for their respective patients. Arrangements were also being made with regard to meeting the patients' dental needs.

11. The deficiencies stated herein as being violative of the stated Regulation 405.1124 (e), (a) and (c) do not state that patients are not receiving rehabilitative services. At the time of your Reviewer's survey, documentation was available to indicate that there was an on-going rehabilitative program.

COMMENT: Complaints about lack of documentation is quite universal in the nursing home field. Lack of documentation, per se, does not necessarily

mean that programs are not in effect. Too, the Regulation hereinabove referred to, 405.1124 (e) does not specifically require that range of motion exercises given to patients necessarily be documented. The Standard requires that there be a rehabilitative program. Interpretative guideline (e) 2 (f) relates to nursing personnel "Assisting patients with their routine range of motion exercises". If such assistance is rendered by Aides and Orderlies as part of their daily routine, the requirement is met. Aides and/or orderlies generally do not document information on patients' charts.

During the period of your Reviewer's survey, unannounced visits were made to each and every nursing area of the Facility. Your Reviewer observed Nurses and other nursing personnel positioning patients, including patients confined to bed. At various intervals during the days of the survey, your Reviewer observed patients confined to bed being properly turned in bed. Too, patients were being assisted with ambulation for various time periods and then carefully seated in geriatric chairs.

Of special note, mention is made herein of the exceptionally fine rehabilitative program conducted by the Facility's Physical Therapy Department. Your Reviewer observed the Director of this Department, on several occasions, discussing procedures to be followed by nursing personnel for patients receiving physical therapy treatments.

12. (a)-(d): Stating that "Nursing personnel are not aware of the nutritional needs of the patients" followed by observations listed under (a)-(d) as

proof thereof is an unwarranted conclusion not substantiated by the facts.

(a) In this instance two patients were observed feeding themselves although there were physician's orders that they be fed. It is not unusual for nursing personnel to encourage the patients to make every attempt to feed themselves or do other things to assist patients in reaching their rehabilitiative goals. Physicians very often suggest to nursing personnel that they should attempt to have the patient feed themselves as a means of encouragement. The reported fact is that the patients were feeding themselves which evidences progress made by them with the help of nursing personnel.

(b) Lack of documentation does not necessarily mean that the fluids were not provided.

(c) The conclusion drawn by the Survey Team in this instance is not a proper one. If the Team observed the trays at the patient's bedside or on an overbed table in the patient's room, then it would be proper to assume that the trays were delivered to the proper patients and there would be no further need to identify the trays. If the Team observed the trays outside of the patient's room and after same had been removed therefrom, it is doubtful if any of the trays being returned to the Dietary Department could be identified as being the tray of any particular patient. It should also be noted that the fact that two trays only evidenced the consumption of beverages only indicates that, for one reason

or another, the particular patients had no desire to eat their breakfast. It is not unusual for patients to decline to eat at times.

During your Reviewer's survey, patients were observed in the various dining areas and in their rooms at meal-times. Most of the patients ate well; some did not eat all of their food; some requested and were provided with additional food after a check was made with the Charge Nurse. A number of patients were talked to by your Reviewer as to the food provided them by the Facility. Overwhelmingly, the consensus of opinion was that the food was very good and that they enjoyed their meals.

(d) The 8 ounces of water should have been provided with the patient's meal.

13. At the time of the survey, medications were being poured and administered by professional personnel. The personnel folder of each and every professional employee was reviewed in detail. Thereafter, professional nursing personnel schedules were checked and then, such staff, on duty, was observed when preparing medications and administering same. At all times during the survey period, either Registered Nurses or LGPN's were handling this function.

14. Your Reviewer investigated the procedures relative to obtaining medications ordered by physicians for patients. The procedures are in accord with general practice.

COMMENT: In making enquiries relative to medications which were not available at a particular time

during the survey made by the Survey Team, your Reviewer was advised that undoubtedly the medication had been ordered but not as yet delivered by the pharmacy.

It should be noted that no check was evidently made by the Survey Team to see if the various patients' medication sheets, for whom the items listed hereunder were ordered, indicated that they had or had not received the said medications up to the time same were found to be unavailable or whether or not the Survey Team made any enquiry as to whether or not such medications would be available for the next administration thereof as prescribed.

15. Your Reviewer observed the recording of all medications administered during the time of his survey.

16. During the period of his survey, your Reviewer observed the pouring of medications and found them to be done as required.

17. Your Reviewer was provided with a copy of letter sent by the Medical Director of the Facility to attending physicians reminding them of their obligation to counter-sign verbal orders.

COMMENT: The failure of physicians to comply with requirements such as counter-signing verbal orders is one found throughout the profession. A large number of facilities are faced with the very same problem. Efforts are constantly being made by Administrators to have attending physicians fulfill their obligations.

18. During your Reviewer's survey of the Facility, every patient's room was visited and a check made of the bed-side cabinets. No medications were found therein.

DIETETIC SERVICES:

19. The Food Service Supervisor is a full time employee of the Facility. This was verified by a check of his payroll records.

20. Regulation 405.1125 (a) does not specify any particular number of hours of service to be provided by the Consultant Dietician. The Regulation provides that "if consultant dietetic services are used, the consultant's visits are at appropriate times, and of sufficient duration and frequency. . . ." Similarly, the interpretive guidelines for such Regulation do not specify any specific number of hours to be provided by the Consultant Dietician.

21. (a)-(b): At all times during your Reviewer's survey, the meals served were in conformity with the planned menu for the day. In addition, appropriate substitutes were available, if needed.

22. At all times during the survey, tray identification cards remained on the patient's tray until after the complete meal had been served to the patient.

23. During your Reviewer's survey, on three separate occasions, while your Reviewer was observing patients during meal times, patients who requested food other that that which was being served were provided with same upon the request of the Charge Nurse to the Dietary Department.

COMMENT: Your Reviewer paid particular attention to the Dietary Department during his survey. The Department is well operated by the Food Service Supervisor who appeared to be well versed on the nutritional needs of the patients. He also evidenced a real concern for the patients.

The vast majority of patients interviewed by your Reviewer indicated that they were well-satisfied with the meals provided to them by the Facility.

PHARMACEUTICAL SERVICES:

24. A random sampling of medications was made by your Reviewer and each and every medication selected was properly labeled when checked against the physician's order.

25. At various times your Reviewer observed the pouring and administration of medications. At each such time, the Nurses properly checked the records. In addition thereto, Nurses were observed carefully checking patient identification bracelets before administering medications.

LABORATORY AND RADIOLOGIC SERVICES:

26. Your Reviewer reviewed the new policy and procedure adopted by the Medical Direction Consultant Committee and was advised that same was in full force and being implemented.

DENTAL SERVICES:

27. Documentation was available to your Reviewer at the time of his survey indicating that Dentist was participating in staff development programs.

SOCIAL SERVICES:

28. At the time of you Reviewer's survey, a full time Social Service Worker was on the payroll at this Facility. During the same time, and on several occasions during the survey period, your Reviewer met with the Facility's MSW Consultant who has all of the requirements mandated by the Regulations.

PATIENT ACTIVITIES:

29. At the time of this survey, the Recreational Director was most active with the patients. In addition, activities were being brought to bed-ridden patients as well. New recreational programs were being planned and some new programs had already been implemented.

MEDICAL RECORDS:

30. (a)-(g): A random sampling of approximately twenty-five (25) records was made by your Reviewer and all were in order with the exception of one (1) record which required a physician's signature for a verbal order. Your Reviewer was advised that the physician was expected that morning to counter-sign his verbal order. A check later that same afternoon of the record indicated that, in fact, the physician had been in and did counter-sign the order.

31. A review of the Facility's policies indicated that physicians are required to complete Discharge Summaries.

A check of several records of discharged patients contained the required summaries.

COMMENT: The failure of physicians to comply with requirements is a rather common problem in many health care facilities. Rules and regulations, insofar as they relate to physicians, are most difficult to enforce primarily because of the attitude of the physicians.

PHYSICAL ENVIRONMENT:

32. At all times during your Reviewer's survey, nursing personnel were observed in attendance in lounge areas where patients were congregated.

33. Hazardous areas were identified for the benefit of blind patients at the time of your Reviewer's survey.

34. Your Reviewer was advised that a waiver had been requested from the Department of Health with regard to a visual warning system.

35. Patients were so placed so as to be in reach of call bell system without difficulty.

Reviewer was advised that new cubicle curtains had been ordered.

PHYSICAL ENVIRONMENT:

36. (a)-(u): At the time of the survey, a new quality control system was in effect. Repairs had been made to most of the specific items listed hereunder. During the survey visit, maintenance people were busily engaged in repairing furniture, tightening handrails and grab-bars, fixing peeling wallpaper and making other similar repairs.

37. Thermometers were available at the nursing stations.

No strong urine odors were present on any floor of the Facility at the time of this survey.

37. (a)-(k): None of the conditions listed hereunder were in evidence at the time of this survey.

COMMENT: It should be noted that at any time it is possible for an incontinent patient to have an "accident" due to inability to control body functions. There can be no question but that an offensive odor will result temporarily until the matter is rectified. Strong odors can only develop and remain constant if there is continual neglect. There was absolutely no evidence during this survey of any strong, lingering odors on any of the patient floors or any of the other areas of the Facility. In fact, your Reviewer was quite impressed with the manner in which the Housekeeping staff performed their duties and the concern they exhibited for the patients.

INFECTION CONTROL:

38. None of the conditions listed hereunder or any such similar condition existed at the time of this survey.

39. (a)-(g): A new system for handling linens and laundry was introduced and was in effect at the time of this survey.

DISASTER PREPAREDNESS:

40. Records were reviewed relative to In-Service programs relating to fire drills. These were in order and it was evident therefrom that staff had been provided with information as to the procedures to be followed.

UTILIZATION REVIEW:

41. Regulation 405.1137 (b) discusses the composition of the Utilization Review Committee. Standard (b) states: "The committee or group responsible for utilization review is composed of two or more physicians and, optionally, other professional personnel". There is no specific requirement that, if the committee is composed with only two physician members, that both must be present at all times. The important aspect is that no physician reviews any case in which he was professionally involved.

PLAINTIFFS' EXHIBIT NO. 6

Report of William J. Jones

An Evaluation of the Town Court Nursing Center
June 1977

I. *Introduction*

This study of the Town Court Nursing Center, 1526 Lombard Street, Philadelphia, Pennsylvania 19146 was requested and authorized by Leonard Coyle, Esq. and the corporate owners of the Center. The impetus for the study was an order for decertification of the facility from the Medicare and Medicaid programs, Title 18 and Title 19 respectively of the Social Security Act. The order for decertification was the result of alleged deficiencies noted in the operation of the Center by the Pennsylvania Department of Health Survey Team during an inspection conducted March 8-11, 1977.

My Charge was to objectively review the operation of the Center and to evaluate the services with specific reference to the alleged deficiencies as they relate to my area of expertise. The author had never heard of the Town Court Nursing Center and began this study without preconceptions or biases.

II. *Methodology*

The method of study was as follows. I visited the Center on June 13, 1977 where the first task was to review the inspection reports of March 8-11, 1977.

Also, I reviewed pertinent correspondence and previous inspection reports of the Center. I then toured the Center extensively. I inspected patient care and living accommodation areas. I interviewed patients at random and in depth. Any visitors, family or friends who were on the premises were also interviewed in depth. I spoke informally with staff. I interviewed Mr. Donald B. Lewis, the Administrator, in detail. Finally, I observed a fire drill conducted by the Center. These activities consumed a full day from 8:50 a.m. to 5:45 p.m. with the exception of a twenty minute lunch break.

Obviously, the purpose of my approach was to evaluate:

1. Physical Plant (Environment)
2. Patient Care
3. Attitude of patients and family
4. Administration
5. Compliance with standards

The following report was written based upon the foregoing visit, study of various documents, interviews, and my notes and reflection on these data.

1) *Physical Plant*

The physical plant is a fairly modern multi-storied building which is light and pleasant. Maintenance appears good. Housekeeping is excellent with floors and equipment clean. Patient bedrooms, ranging from private, single bedrooms to four-bed rooms were light, clean and cheery. Bed linen was clean and fresh. Most important, to the trained observer, bed frames were clean indicating good housekeeping

procedures. No offensive odors were detected, nor was there any odor of disinfectants.

Several small maintenance problems were observed including, inter alia, a broken window frame and the front of a radiator cover pulling away. These certainly do not pose a threat to the health or safety of patients nor staff. They do, however, require attention.

Generally, the physical plant as related to 20 CFR 405.1134 is, in my opinion, in substantial compliance. I would rate the center in the 75th to 80th percentile when compared to the universe of long term care facilities.

One note is important to recognize, which is that any facility has on-going maintenance problem. Anyone can visit any facility, be it nursing home, hospital, public building, or even one's own home, and at any given point in time can detect things which must be or should be corrected. Consequently, the rule of reasonableness must be applied when conducting an inspection. With this rule in mind, it is my professional opinion that the Town Court Nursing Center substantially meets requirements.

It appears that the draconian conclusions of the surveyor(s) with reference to the physical plant smack of over-zealousness.

Interviews with patients and visitors confirmed that no special effort was made to clean the facility for the purpose of impressing the author. Patients and visitors alike testified that the clean conditions found on June 13, 1977 were the usual. Not one

patient and/or visitor complained of inadequate housekeeping and/or maintenance, even when encouraged to complain.

2) *Patient Care*

Without delving into medical diagnosis or prescription for pharmaceutical or therapeutic procedures, which are not in my area of expertise, I reviewed the care provided patients.

Patients were clean and without detectable body odor. Clothing was clean and appeared fresh (patient clothing is exchanged every second day). I specifically looked at patients' hands for signs of neglect. All patients interviewed had clean hands and manicured fingernails. More importantly, I randomly checked 12 patients' toenails for any sign of neglect. All had appropriate pedicures with clean feet. As we teach, the review of foot care is a more viable tool to evaluate nursing care than the obvious review of fingernails. The female patients appeared to have their hair combed or brushed. None were noted to have had professional beautician services as evidenced by lack of setting or waving. Many male patients were sporting a two (2) day growth of beard. Apparently males are shaved twice a week by attendants. While the services of a barber, who also shaves, are available, few patients are willing to spend the $2.00 for shaving. When staff was questioned as to why "personal incidental" money was not used to buy shaving equipment, especially electric razors, they replied there was a security problem. Consequently there was a concern that these items, if purchased, would "walk off the premises."

The author is empathetic with the problem since *all* health care facilities, as well as industry, suffer from this phenomenon. However, it is recommended that male patients capable of shaving themselves be encouraged to do so. Also, the Center should give serious thought to providing the means to carry out this activity.

"Development of decubiti is prima facie evidence of poor nursing care. Healing of decubiti is evidence of good nursing care." Dr. Henry Kessler, world renowned orthopedic surgeon and founder of the Kessler Institute for Rehabilitation, has long preached and taught the above cited principle. Using this axiom I must confess I was impressed with the care given at Town Court. Specifically, there is no evidence that a decubitus developed on any patient *after* admission to the Center. There is evidence that patients admitted from hospitals were admitted with decubiti. The decubiti *were healed* at the Center.

Further, I note that the Pennsylvania Department of Health inspectors noted, "a patient in Room 510 was observed lying on her decubiti ulcer (with no dressing) in cold urine." This statement is illuminating. First, it appears that basic nomenclature used to describe conditions is not known to the inspector —decubiti is plural—ulcer is singular and redundant. So did the patient have one bedsore or more? Second, how does one determine if the urine was cold? Last, did the inspector determine that the physician ordered the ulcer dressed? (Or, does the inspector make the decision that the ulcer should be dressed?)

This author particularly sought out this patient and investigated her present condition. This patient is now "clean" with no bedsore(s). One is forced to ask if the care was so bad as indicated in the inspector's report, how could the patient's bedsore be healed?

This author observed no patient, with one exception, sitting or lying in urine. The one exception was a patient on the fourth floor who had an "accident" while being interviewed by the author. I didn't summon aid. However, within ten minutes an employee came to the room and was observed assisting the patient.

I observed one problem which should be reviewed and corrected; namely, inadequate wheelchairs. Several patients were in wheelchairs without footrests. As a result, a patient had to be pulled backwards so that his feet dragged on the floor (to push the patient forward could obviously cause damage to the patient). Anyone familiar at all with physical medicine knows that wheelchairs are a prescription item and must be provided for each patient's specific need. It is obvious that whatever wheelchairs are available are Center equipment and not generally prescribed for each patient. On the other hand, the cost of prescribed wheelchairs is too onerous for this or any other similar medical facility. Therefore, this situation can only be equitably resolved if the Title 18 and Title 19 programs recognize their responsibility and permit and pay for the purchase of prescribed wheelchairs. Without this it is my opinion that the Center, or any other health facility must gerrymander equipment.

The services of a consulting psychiatrist should be considered.

3) *Patient Attitudes*

Recent court decisions and patient rights regulation and activity have established the tenet that the patients' attitudes, comments and judgments must be considered in evaluating care received by the patients. It is evident that patients must have the ability to make knowledgeable judgments. The author takes the position, therefore, that patients' observations on the palatability of food, the cleanliness of the facility, the attitude of staff, et al are areas whereby the facility can be partially assessed.

The Town Court Nursing Center as evaluated by the patients and/or relatives in the areas within their competence receives high ratings. The author was impressed by the many instances of high praise. The following few examples are included to certify this conclusion.

Patient "A" is a private patient. She was readmitted to Town Court on the day the author visited the Center. Her husband was in the patient's room where I interviewed him and his wife. It was related that the patient had previously been in Town Court and then discharged to a hospital. On being discharged from the hospital the patient and her husband insisted on returning to Town Court. Both the patient and her husband are learned people. The husband is a successful engineer. Both related to me their reason was that the care at Town Court was superior to other facilities. Also, they had numerous other options of nursing homes to choose from since they were private payors (apparently paying twice as much as the State of Pennsylvania pays for Title 19 recipients). Their testimonial speaks well of Town Court.

Patient "B" is a medicaid recipient who was previously in (deleted) Nursing Home. Also interviewed was the patient's daughter who was visiting her mother. The daughter related that her mother had developed a bedsore while in a hospital. This sore was not healed while in the (deleted) Nursing Home, which she described as "terrible." She insisted on a transfer to Town Court and this was accomplished. The previously unhealed bedsore was treated and healed at Town Court. Both the patient and daughter stated that Town Court provided "excellent care, good food and good activities."

Patient "C" is an aged lady who was interviewed in the presence of two of her sons. Like patient "B" she also had been in another nursing home prior to coming to Town Court. Both sons testified that Town Court "is as good as, if not better than, (deleted) Nursing Home." They have "no complaints whatever."

Patient "D" is presently awaiting discharge to a religiously oriented orthodox home. When interviewed in the presence of two friends, she stated that Town Court was an excellent place and the only reason she was being transferred was to be with orthodox colleagues. The friends of this patient commented on how "clean" Town Court is. When asked, "Is it always this clean?" they replied, "Always."

These are some of the examples of replies received by this author during his interviews. Of the numer-

ous patients interviewed only one patient had a negative comment, which was, he complained about the service. When asked to expand he stated, "The service is bad because they won't let me go home." (N.B. I was informed that the patient has no home.)

It is my opinion that the attitudes of the patients reflect a highly commendable evaluation of the Center as seen through their eyes.

Further, the Town Court Nursing Center has a patient grievance committee which reviews complaints. Valid complaints are brought to the attention of the Administrator of the home. I am informed by members of the committee that results are "very satisfactory."

Also, this home has a house paper called the "Town Court Crier" published by patients.

4) *Administration*

This author spent considerable time with the Administrator, Mr. Donald B. Lewis. I found Mr. Lewis to be a competent and committed person. He possesses all the credentials necessary to administer the Center. He is licensed by the State of Pennsylvania as a Nursing Home Administrator. Mr. Lewis is the successor to several previous administrators over the past several years. One would hope he will enjoy some tenure in this position.

Mr. Lewis is presently attempting to revise the policies and procedures of the Center to more accurately reflect and assure that standards are identified and carried out. This activity is not reflective of any existing lack, but rather is an attempt at refinement of policies. In my opinion he is making acceptable progress.

Also, Mr. Lewis verified that additional personnel have been added to staff. One person, Patricia Hayes, was employed to be the assistant to Joyce Parker in recreation activities; Doctors Berkowitz and Morrow, both dentists, have been added to the staff to conduct in-service and dental Rx programs; Mr. Irv Segal, MSW has been added; Ms. Lucas, consulting dietician, has had her time increased to seven (7) hours per week.

Mr. Lewis demonstrated that the food service supervisor is qualified and works full time. This point is important since the home received a deficiency that "The food service supervisor is not a full time employee of the facility." It appears that the surveyor was in error on this issue.

5) *Standards*

As previously stated I reviewed the Statement of Deficiencies and Plan of Correction (Form SSA-25-67) in regard to the survey completed March 8-11, 1977. At this point I would endeavor to make appropriate comments on those sections bearing on my area of expertise.

1. F 14 Reg. 405.1120 (c)

   "The written agreement with the Intermediate Care Facility has expired."

   Comment: This is not a deficiency since no regulation exists requiring a SNF/ICF to have an agreement with another ICF. I can see no logic

to listing this as a deficiency except to "pack the gallery."

2. F 14 Reg. 405.1120 (c)

"Two (2) Medical records reviewed lacked documentation of yearly blood and urinalysis reports."

Comment: One can only assume this reference is to employees health services, since this regulation refers to conformity with applicable federal, State and local laws—not to section 405.1132—Medical Records. Assuming this refers to employees health, 2 out of 67 employees reviewed indicates the program is 97% effective. This percentage exceeds most facilities. This item, in my opinion, should be an "it is recommended" and not a deficiency.

3. F 15 XRF 19 23 25 27 28 62 64

Reg. 405.1121 (c), (e), (k)

"The governing body and administrator are not enforcing rules and regulations relative to the health care and safety as evidenced by lack of supervision of physician's services, nursing services and medical records."

Comment: Res ipsa loquitur. This deficiency is apparently based on following notations which are either unfounded or have been corrected.

4. Reg. 405.1121 (g)

"The facility is not complying with its policy to have completed annual physical examinations

and chest x-ray or mantoux tests on all employees. This is evidenced by:

a) lack of documentation of mantoux tests or x-ray findings on twenty-two (22) out of sixty-seven (67) employee health records reviewed.

b) physical examination results were lacking on two (2) out of sixty-seven employee health records reviewed."

Comment: Facility changed policy. Not all employees are required to have a mantoux or x-ray except those required by law, i.e. dietary. Plan of Correction is legal and should be acceptable.

5. Reg. 405.1121 (h)

"Documentation that inservice education programs were conducted for confidentiality of patient information and accident prevention was not available for review."

Comment: Deficiency listing is inappropriate —documentation exists for inservice held on confidentiality of patient information. Plan of Correction should be accepted regarding accident prevention. When all the items of in-service as defined in this section are reviewed, and only one is cited, any reasonable person would conclude that this should be an "it is recommended" notation, not a deficiency.

6. F68, 72, 73, 75 XRF66

Reg. 405.1121 (k) (2), (6), (7), (9)

"Procedures have not been developed, in writing to inform patients of related charges and

charges not covered under titles XVIII and XIX or charges not covered in the basic per diem rate."

Comment: Corrected.

"Documentation that patients are given a quarterly accounting of financial transactions was not available for review."

Comment: Corrected.

"Three (3) patients who were observed in restraints did not have a physician's order for the restraint."

Comment: Corrected. This item should be reviewed by the physician and nursing consultant.

"The following unacceptable situations were observed:

"a) an aide was observed bathing a patient, while the surveyors were present, with the patient completely exposed."

Comment: This item is difficult since this author has no way of knowing whether the patient was being bathed in the bath and shower room when the surveyors entered. If this is the case, then the surveyors were at fault, not personnel.

"b) a patient was observed being pulled through the corridor (5th floor) clothed in only a bathrobe which was on backwards. The patient was exposed."

Comment: The language of this deficiency is rather confusing. This author has no way of

determining what "being pulled" means. Second, it is not unusual to clothe a patient in a bathrobe placed on backwards. In many circumstances bathrobes, as well as gowns, are placed backwards for the appropriate handling of patients. The fact that the patient was exposed, if indeed patient was exposed, certainly would require correction through inservice training for the staff.

"c) One (1) female patient was observed being pushed in a wheelchair to the bathroom without footwear. Care was not taken to protect the patient's feet causing one foot to jam into the door."

Comment: Staff should be trained through an on-going in-service training program to assure proper transportation of patients.

"d) Two (2) patients were observed being pushed and pulled, by the same person. This caused one patient to be pulled backwards."

Comment: I presume this relates to two wheelchair-bound patients. However, the deficiency is not specifically detailed to present enough facts for comment. As previously stated in other portions of this report, many of the wheelchairs lack footrests thereby requiring patients to be pulled rather than pushed. Further, it is recommended that the in-service program initiated by the Center would assist in rectifying any problem of this nature.

"e) Twenty-one (21) patients plus the patients in the 4th and 5th floor lounges were ob-

served with excessively long, dirty and/or unmanicured fingernails."

Comment: This author did not find any validity to this deficiency on the June 13th visit.

"f) Nine (9) male patients were observed in need of a shave, as evidenced by excessive growth of beard."

Comment: Several male patients did have more than a 24-48 hour growth of beard. It is recommended that the facility intensify its efforts in self-help activity to permit male patients who are capable of performing this function to do so for themselves. In addition, it is recommended that the services of a barber, along with attendants, be intensified to assure availability of shaving.

"g) Eighteen (18) patients were observed with poor oral hygiene (i.e. food particles in teeth and/or dentures, teeth missing, food particles on mouth, lips and gums)."

Comment: This author must question the validity of the surveyors' observation on this point. However, whatever problems exist have been or will be corrected by the appointment of two D.D.S.s.

"h) Thirty-three (33) patients plus patients in the 3rd and 4th floor lounges were observed inappropriately dressed (i.e. no underwear, no shoes or socks, diapered with a towel, stained or torn clothes)."

Comment: This author did not observe patients inappropriately clothed to the extent the surveyors noted in their report. However, it is recommended that the facility intensify its in-service training program in this area to assure proper clothing of patients.

"i) a patient in room 510 was observed lying on her decubiti ulcer (with no dressing) in cold urine. Approximately five (5) patients were observed lying or sitting in urine."

Comment: The author tracked the patient referred to and is pleased to note that the decubitus is now clean. As noted elsewhere in this report, the cleaning of decubiti is evidence of good nursing care.

"j) A patient was observed in room 514 with what appeared to be vomitous on his face, shoulder and bed."

Comment: The important factor in this observation is whether the alleged vomitous was fresh. It is conceivable that if the "vomitous" was on the patient, that it could have occurred immediately before the surveyors' observation. On the other hand, if the vomitous were stale, it would indicate a lack of observation and care on behalf of the staff. In any event, it appears to this author that if this phenomenon did occur, it is not indicative of the care given by this Center.

19. F209 Reg. 405.1125 (a)

"The food service supervisor is not a full-time employee of the facility."

Comment: From interview and records it is demonstrated that this deficiency is not correct.

The food service supervisor is a full-time employee.

20. F213 Reg. 405.1125 (a)

"Time spent in the facility by the consulting dietitian is not sufficient to provide adequate nutritional counseling for 190 patients or continuing liaison with medical and nursing staffs."

Comment: The consulting dietitian provides seven (7) hours per week consultation to the facility at the present time. It is felt that this commitment in time is sufficient for the present needs.

27. F301 302 XR F48 49

Reg. 405.1129 (a) 405.1121 (h)

"Documentation of the advisory dentist participating in staff development programs was not available."

Comment: As of June 1, 1977 two dentists, Doctors Berkowitz and Morrow, will participate in in-service training and staff development. Appropriate documentation will be provided.

28. F316 319 XR 311

Reg. 405.1130 (b) (a)

"The consultant for social services is not qualified."

Comment: This deficiency has been corrected by the employment of Mr. Irv Segal, MSW.

29. F330, 331 Reg. 405.1131 (b)

"The activities program is not meeting the individual needs of all the patients as evidenced

by patients sitting idly in the lounge areas and bedrooms on all floors."

Comment: An additional person, Patricia Hayes, has been assigned to the Activities Director on a full-time basis as of June 6, 1977.

32. F366, Reg. 405.1134

"Patients were observed, unattended, in patient lounges with no provisions for summoning assistance."

Comment: This is not a deficiency. There is no standard requiring call systems in patient lounges.

33. F388 Reg. 405.1134 (c) (5.11)

"The facility does not provide a means for the blind to identify hazardous areas."

Comment: There are presently three (3) blind patients in the Center. The administration has provided, inter alia, tapes on handles of entrances to hazardous areas.

34. F389 Reg. 405.1134 (c) (5.12)

"The facility does not provide simultaneous audible and visual warning signals."

Comment: The Center has an audible call system and has requested a waiver on the visual system. Since other facilities have been granted waivers for a visual warning system, it would appear the request of the Center should be given serious consideration.

35. F396, 397 XRF366 75

Reg. 405.1134 (e) 405.1121 (k) (9)

"Five (5) patients were observed in bed with the patient call bell out of reach. Patients who were observed sitting in chairs did not have call bells within reach.

"Privacy curtains in several patient rooms on the 2nd and 3rd floors were too short to ensure privacy in treatment and/or care."

Comment: No facility in the country has a call system that is adaptable to providing mobility to accommodate all loci of patients. To insist that every patient have call bells immediately available when sitting in chairs would mean that every hospital and health facility in the country would not be in compliance. Obviously, the patient's condition and mobility is a determining factor. I consider this listing of a deficiency to be inappropriate. I have been assured by the administrator that new cubicles for the 2nd and 3rd floors are presently on order.

36.F416, 418, 419 Reg. 405.1134 (i)

"The following were in need of repair:

a) protective cap was missing from the bed in room 511.

b) cement was cracking away from the beam in the food storage area.

c) the paper was coming off the wall on outside room 511.

d) assist bars were not provided for the toilet in the bathroom in room 511.

e) Room 412—Assist bars were not provided for the toilet, the metal door on the closet was bent and had sharp edges protruding.

f) Room 456—the dresser drawer was missing a piece on the bottom

g) Room 309—the dresser drawer had no handles

h) Room 313—radiator cover was broken

i) Room 314—side-rail on the patients bed was broken the radiator cap was missing, the radiator cover (in the closet) was coming loose from the radiator, plaster was flaking above the radiator in the closet.

j) Room 415—the sink in the bathroom was coming away from the wall.

k) Trash was observed stored in the fire exit stairwell (original building) on the 4th and 5th floors.

l) Fifth floor dining room—burn marks were observed on the floor

m) Call bells were not functioning in rooms 353 and 550.

n) Room 509—wall paper was peeling off the wall

o) Room 517—corner baseboard radiator cover was loose and the overbed light was not functioning

p) Room 517—(tub room) had broken tiles

q) Room 351—the cover for the commode was broken

r) Water fountain (3rd floor) was not working

s) Room 318—bathroom tiles were broken

t) Room 554—(tub room) the knob was off the call bell leaving a sharp edge exposed

u) Room 317—the cord to the overbed light could not be reached by the patient."

Comment: It is my professional opinion that a review of the total operation of the Center indicates substantial compliance with this Regulation. Obviously, the items listed require correction and I am assured by the administrator that maintenance has or will correct all the notations. It would appear to me that while the listings may be appropriate, I have intuitive reaction that they tend to be an "overkill."

37. F420, 421 XR F41, 45

Reg. 405.1134 (j) 405.1121 (g)

"Thermometers were not available on the nursing unit to be able to assure the proper temperature of bath and shower water. There was a strong odor of urine on the 4th and 5th floors and room 206 on the 2nd floor.

"The following unacceptable conditions were observed:

a) the floor in room 508 was sticky and encrusted with food particles.

b) Room 511—a bedpan was stored on the floor under the bedside cabinet and a soiled basin was observed on the floor in the bathroom.

c) Room 309—the cubicle curtain was stained with an unidentifiable substance.

d) Room 417 and 421—had an offensive odor

e) Room 552—paper towels were not available in the bathroom, the water pitcher tray and urinal were soiled with dirt.

f) Room 509—the bathroom sink was dirty

g) Room 517—the bathroom floor was soiled

h) Room 402—the bathroom lacked paper towels

i) Room 450, 451 and 452—the bathroom floors were soiled.

j) Room 412—bedpan was observed on the bedside stand

k) Fourth floor employee bathroom—sink and floor were dirty, stained and ashes were observed in both areas."

Comment: It is my professional opinion that a review of the total operation of the Center indicates substantial compliance with these Regulations. Obviously, the items listed require correction and I am assured by the administrator that maintenance has or will correct all the notations. It would appear to me that while the listings may be appropriate, I have intuitive reaction that they tend to be an "overkill."

40. F457, 459 Reg. 405.1136 (b)

"A fire drill conducted by the survey team revealed the following:

a) Fifth floor—only one aide was available on the old wing, patients were left unattended in the day room with the door closed, no one assumed a charge position and no one assumed responsibility for the retrieval of records.

b) Fourth floor—housekeeping personnel continued to clean, Room 404 the door was held open, patients were left unattended in the lounge, room 409, 413 and no one assumed responsibility for the retrieval of records. The doors to rooms 450, 453, 451, 455 and 459 were left open.

c) Second and third floors—no one assumed responsibility for the retrieval of records."

Comment: During my inspection a fire drill was conducted. While the results of this drill would not indicate a level of proficiency one would expect, it is important to note that ongoing training under the professional aegis of a former Philadelphia fire officer is being conducted. One can anticipate that the disaster preparedness will increase in proficiency as these drills and in-service training continue.

III. Conclusion

After careful review and reflection on the operation of the Town Court Nursing Center, the survey agency report, and a study of the State survey agency's Long Term Care Manual from the U.S.

Department of Health, Education and Welfare, Office of Nursing Home Affairs, it is my opinion that the Order for Decertification is draconian and not supported by the intensity of the cited deficiencies. Further, it would appear that the description of the survey team's function as described in a Long Term Care Manual was not evident in the actions of the agency. I make specific reference to the requirement that the State agency is to make an attempt to upgrade the services, to provide consultation services to the facility, and, generally, to act as consultants to the facility. I can find no evidence that the State agency was involved to the extent as described in the Long Term Care Manual.

Another requirement of the State agency is to make an evaluation as to the willingness and ability of the facility to undertake efforts to correct any deficiencies. Here again, it is my considered opinion that the management of the Center has made a commitment to correct any outstanding problems. This motivation and commitment, as defined in the facility's Plan of Correction, should permit any reasonable person to authorize the time to make said corrections.

I am particularly concerned that the patient population of the Center shall be adversely affected by the Decertification under the Title 18 and Title 19 programs. These patients, in my opinion, are pleased with the accommodations and service. To force them to move to other facilities would be a violation of their constitutional rights. This is particularly so since the listed deficiencies are either incorrect or the State agency has not provided the, "special State documentation in non-compliance cases" as required

by federal guidelines. The deficiencies listed are not of specific nature as to illustrate, ". . . that a patient's health or safety has been endangered by the deficiency or why he believes that it might endanger patients' health and safety." I am further convinced that the public good would better be served by the State agency and the Center taking the steps to mutually resolve problems so that the facility would be in full compliance with all real and imagined regulations. To do otherwise would deprive the patient population of needed services and would be a potential violation of their constitutional rights.

Respectfully submitted,
(s) William J. Jones
William J. Jones

WJJ:DG

PLAINTIFFS' EXHIBIT NO. 7

JOHN E. CUMISKEY, R.N., FACNHA
NURSING HOME CONSULTANT
Marshalls Creek, PA. 18335

June 28, 1977

Mr. Leonard A. Coyle, Esq.
332 W. State Street
Trenton, New Jersey 08608

Dear Mr. Coyle:

In accordance with our conversation and agreement of June 6, 1977, I visited the Town Court Nursing Center in Philadelphia on Tuesday, June 14, and Wednesday, June 15, 1977. As per your request and with the permission of the management, I conducted a peer review survey of this facility on those days.

I was there between the hours of 10 A.M. and 7 P.M. on Tuesday, and from 8 A.M. to 4:30 P.M. on Wednesday, a total of 17½ hours, excepting ½ hour each day for lunch. Incidentally, I had lunch each day at 2 P.M. rather than at noon as I wished to observe the methods of serving and feeding patients on all floors. I was also on all four floors during the hours when the patients were receiving their A.M. and P.M. care. (Bathing, grooming, dressing, undressing, etc.) I also observed the pouring, preparation etc. of medications on all floors. I made continuous rounds during these times, as I wished to see the actual patient care in progress. I also did not wish those personnel administering this care, to be aware of my observation.

As you know, in addition to being a registered nurse, I am a licensed Nursing Home Administrator with 30 years experience. I was also, (among other assignments), a Mess Officer in a 900 bed Station Hospital during World War II. These qualifications, I believe, should give me the competency to render to you the survey report you requested.

For the purpose of clarity, I believe it is best if I refer to these matters by components, as they are outlined in the "Manual of Conditions of Participation". This is, of course, the standard used by the Dept. of H.E.W. for Compliance and Participation in the Nursing Home Program, as administered by the various states.

Leonard A. Coyle, Esq.

Survey: Town Court
Nursing Center

John E. Cumiskey R.N., FACNHA
Nursing Home Consultant
Marshalls Creek, PA 18335

ID PREFIX TAG

Governing Body and Management
F 68 72 73 75 XRF66

In this area I reviewed the corporate records, met the administrators and found all requirements in order. All required documentation of personal policies, employee records as to health certification, employment applications, etc. were as regulations require. Work assignments were available for all personnel.

6. There were available written policies and procedures giving notice to patients, or other responsible

parties, of changes in patient status, charges, billings, etc. and of those charges not covered in the basic per diem rate. A written policy outlining quarterly financial transactions for patients is available. I read this policy and find it most adequate.

Digression:—I am puzzled as to why those statements identified as "A thru J" (under item 6) should be included under "Governing Body and Management". I would think they should come under Nursing Services. However, I will continue to follow the surveyor's outline as they presented it.

6. (cont'd) I observed the total number, (24), of patients in restraint at Town Manor. I found these restraints to be manufactured by the Posey Co. They are of the type known as Vest Restraints, Waist Restraints, and Limb Restraints. These restraints are strictly of the patient protection type; that is, they help prevent the patient from falling out of bed, from a chair, or from doing other damage to themselves viz. (severely scratching, cutting, or bruising themselves, pulling out catheters etc.). I received all of these charts and there were current physicians orders for every one of them.

(a-d)

At no time during my survey (and I must again accentuate that the personnel were not aware of my mission), did I observe any maltreatment of patients by any personnel. I observed a great deal of transporting of patients; from patients rooms to lounges, to the telephones, and to lavatories. Also to tub rooms and showers, to activity rooms, to the main floor, to the group activity room, and finally to the

first floor to physiotherapy. The patient care as it was being given, and the transporting of the patients showed kindliness, gentleness, and concern for the patients comfort, and physical well being.

(e-f)

I checked at random on all four floors at various times of the day on both days I surveyed Town Court. These times were: 10:15 a.m.-11:00 a.m.-12:00 noon-1:00 p.m.- 3:00 p.m.-5:30 p.m.-6:00 p.m.; time approx. each day. The patients I personally checked, and those I observed as I made my rounds showed every evidence of good nursing care. I saw no one with overly long finger nails nor did I see any man in need of a shave. I did, however, notice one woman with a some what excessive growth of hair on her face in a few areas. I suggested to the R.N. in charge on my departure that this lady's physician be consulted as to what procedure to follow in this instance. In my survey of in-service training I found it very strong on patient grooming.

(g.) I examined (with a tongue blade) about 40 patients mouths. Some had complete dentures which were well cared for. Some needed dental care. None had food particles lodged in their teeth or mouths. I was shown documentation that the dental inservice training program has been greatly strengthened, as has been the entire dental care program. A policy is now in force for every patient to have a dental exam by a licensed dentist on admission, and yearly thereafter.

(h.) At no time did I observe any patient inadequately or inappropriately dressed. All presented a nice neat appearance.

(f.) I have reviewed the procedure as outlined and prescribed by the Medical Director for the treatment of Decubiti. In many (in fact in most instances) he prescribes that no dressings be used on Decubiti. In some instances it is recommended that dressings be used, this is noted in the Doctor's Orders and records are entered of the treatment on both the doctors and nurses notes.

I checked 47 incontinent patients at various times in two days. I found four lying or sitting in urine, two were in the process of being changed. In my opinion, the other two patients had just voided very recently. For this number of incontinents, I consider this very remarkable. There are only seven Decubiti in this facility, most of whom came in this condition from other institutions. Out of a census of 186 patients, this bespeaks a very strong performance in this area.

ID PREFIX TAG
NURSING SERVICES
F-128

8. There is in writing, a procedure for cleaning combs and brushes. I reviewed it. It is certainly adequate. Reg. 405.1124 (a)

F-129 133 XRF 181 182

9. I read the assignment sheets now in effect for the 11-7 tour of duty and they reflect the necessary duties to be performed. Reg. 405.1124 (a)

F-169 170 171 172

10. I reviewed a total of 52 charts selected at random (by myself), in all pertinent and required

areas during the two day period of my survey. My review substantiated the following:

(a) All charts reviewed showed activity program evaluations; goals and follow ups were current and pertinent to the patients needs.

(b) As noted previously, in Item 6, subsection (g), dental evaluations and reviews are now being performed and inservice training in this area has been strengthened for all personnel.

(c) This area has been corrected. The charts all show evaluation and patient counseling by the consulting dietitian.

XRF-123 128 134 135 136

(d) I reviewed 35 charts for physicians immediate and long term goals. They were all complete and timely.

(e) I reviewed 52 Nursing Care Plans and found them to be up to date. These plans outlined specific and complete plans of care, as well as short term goals.

(f) Social Service records now show the follow up to reflect social needs. Reg. 405.-1124 (d), (a), (c).

F-173 174 175 176

11. In my rounds, as I noted previously, all patients and I trod every foot of Town Court Nursing Center, showed every evidence of receiving good nursing care. However, I believe it should be borne in mind that many of these patients suffer from one or another of some of the most disabling of the many chronic illnesses. General headings would include

diseases that are Cardiovascular, Nutritional, Cancerous, Arthritic, Neuro-genic, Genito-urinary, or intestinal in origin. This is, of course, not a complete list because it doesn't mention the many complications of these diseases. Nevertheless, it should convey the immense difficulties encountered in giving rehabilitative and restorative nursing to persons with these illnesses.

XRF-123 128 134 135 136 161

(a) I did not see any patient during my survey in poor body positioning or alignment. However, just to mention a few types of diagnosis that could work themselves into poor body alignment and positioning in a matter of seconds I mention to you the following: Hemi-plegics, Para-plegics, Quadra-plegics, Spastics, Multiple Sclerosis, Amyotrophic Sclerosis, Muscular Dystrophy, Arterio Sclerosis and so on ad-infinitum. I think it requires a great and constant effort to try to keep these patients and others in proper alignment and to give them the best possible care in every area. I believe this battle is being successfully waged and constantly reinforced at Town Court Nursing Center.

(b-c)

On checking the procedures for bowel and bladder training, I discovered that this was in force at the time of the inspection. However, this has now been reinforced. Records of this training are kept via a card posted above the patients beds and also by documentation on their charts. Inservice is ongoing and is being reinforced in this area.

(d) Documentation of Range of Motion Exercises for stroke patients and amputees is available on the respective patients charts. Reg 405.1124 (e), (a), (c).

F-177 178 180

12. I observed five meals and checked many charts and I believe nursing personnel are very much aware of the patients nutritional needs.

(a) I observed a great many patients being fed (very patiently), also noted orders for spoon feeding and for pureed foods. I also checked orders for other special diets and found they were carried out.

XRF-123 128 134 135 136

(b) I found documentation of intake and output records on those charts reviewed that called for this information. On investigation, I discovered that the one patient on which this information was lacking was no longer on intake and output. What happened was that the doctor cancelled this order when the patient became well hydrated. Inadvertently, a nurse in transcribing the orders for the current month, carried the order forward, however, it was no longer in force and therefore, was not being carried out. The doctor has attested to this fact via a letter.

(c) At 11:30 A.M., I did not observe any breakfast trays in evidence. However, as it was almost time for lunch, this did not surprise me. I then went to the kitchen to check this item; again no breakfast trays. I inquired of the Food

Manager and was told the breakfast trays were always down and washed long before this time.

(d) I have no comment on this, as I did not observe a similar instance. It is important in this area that supervision and inservice training be continually reinforced to prevent such incidents. Reg. 405.1124 (f), (a), (c).

F-181 182 XRF-123 128 134 135 136 137 279

13. In my observations covering two days, medications were only administered by R.N.'s and licensed Graduate P.N.'s Reg. 405.1124 (g), (a), (c). 405.1127 (d).

14. The medications outlined in the inspection report were all on the medication charts. I checked these charts on all four patient floors, and checked many medications for proper labeling, storage, administration etc. I also checked the emergency medication tray on each floor for proper labeling and content. While I was there I witnessed a three-way check being conducted. All these areas I found to be in good and proper order.

F-186 XRF-346 128 263 264 267 279

15. I found on all 52 charts surveyed that all charting of medications and treatments were as ordered by the physician. Reg. 405.1124 (e), (a), 405.1132 (c), 405.1127 (a), (d).

F-187 XRF-128 279

16. I saw no evidence of any pre-poured medications. All personnel must be made to understand that this is never to be tolerated in any instance. Reg. 405.1124 (g), (a), 405.1127 (d).

F-193 XRF-346 128 279 350 352

17. All verbal orders reviewed were countersigned by the physician within 48 hours. Continued cooperation by the doctors is, of course, very necessary. Reg. 405.1124 (b), (a), 405.1132 (c), (d), 405.1127 (d).

F-203 XRF-128 129

18. I checked out 70 patient's bedside stands and areas and found no medications in evidence. I do however, recommend continued vigilance and emphasis in this area. Reg. 405.1124 (i), (a), 405.-1127 (d)

PATIENT ACTIVITIES

F-330 331

29. I found the patient activities program to be very busy and diversified. I consulted with the full time Director and found her to have a college degree in this area. Activities are carried out in three different physical areas, in a large recreation room on the main floor; inactivity rooms, one situated on each of four patient floors and at the patients bedside. General programs offered are, religious services, arts and crafts, bingo, games, birthday parties, holiday observances, newspaper and public events meetings, appearances by musical groups, play and dancing groups and residential council meetings. My research and observations brought me to the conclusion that a great majority of the patients partake of all or, some of these programs. However, as always some cannot participate because of their physical or mental condition, and there are others who will not participate in anything, regardless of the efforts made to induce them to. It is my opinion that this program is highly successful and is being vigorously carried forward in all areas. Reg. 405.1131 (b)

MEDICAL RECORDS

F 335 344 346 XRF14 73 81 85 521 522

Here again I reviewed 52 patient charts and found that all were current and complete in the following areas.

(a) Patient assessments by physicians and nurses were adequate and up to date.

(b) Discharge planning is a hazy area at best. Although I did find much evidence of this, this represents a medical opinion and as such it is often questionable in cases of chronic illness. Very often it is difficult for a physician to commit himself in this area.

(c) All patient care plans evaluated, reflected good current plans of care, gave the patients status, and the goals to be strived for.

(d) All patient consent forms surveyed were signed by the patient or guardian.

(e) All nursing histories were dated and in good order.

(h) 1-2-3

All nursing summaries on all three shifts were complete on all 52 charts surveyed.

(g) 1-2-3

I reviewed 15 charts in the areas of diagnosis, therapeutics, progress notes, clinical findings etc. I found these to be adequate and informational. Here

again each physician is different in the way he believes this should be done.

Reg. 405.1132 (c)
405.1120 (c)
405.1121 (k), (7), (L)
405.1137 (H)

F 353 354 355 XRF346

31. I did not review any closed medical records. The Operations Officer and the Director of Nursing have told me that these have been audited and are now in good order.

Reg. 405.1132 (e), (c)

PHYSICAL ENVIRONMENT

Town Court Nursing Center is to be commended on the condition of its physical plant and its general all around good housekeeping and cleanliness. The floors were exceptionally clean and shining. All areas were well dusted and ventilated. All the lavatories and tub rooms were clean and neat. I could detect no disagreeable odors in any area.

F 366

32. Electronic call buttons were not present in three patient activity areas. These areas are immediately adjacent to their respective nursing stations. On my visit I observed that tap bells had been installed in each of those areas

Reg. 405.1134

F 388

33. In all hazardous areas, particularly those exit doors leading to elevators and stairways, tape, which

has been sprayed with an abrasive type paint has been installed. The inservice program is being reinforced in this area. Although there are no blind persons in Town Court at present, all personnel are being acquainted with the necessity of indoctrinating patients now and in the future in this most important matter.

Reg. 405.1134 (c), (5.11)

F 389

34. As I read the conditions of participation Audible and Visual Warning Systems are not a present requirement. It is also my understanding Town Court has requested a waiver of this recommendation.

Reg. 405.1134 (c), (5.12)

F 396 397 XRF 36675

35. All patients rooms are equipped with Audio-Visual call systems. All bed patients on my observation had the call button pinned within reach on their bed linen. Those in chairs were positioned so that they could reach the call bell that was resting on top of the bed spread.

In my two days in the facility I did not see one patient's room in which the privacy curtains were not drawn when necessary.

Reg. 405.1134 (e)
405.1121 (K), (9)

Although I was not asked to do so I took it upon myself (since I am inquisitive by nature) to inspect the kitchen area. I found the kitchen, the dishwashing area, and the store rooms to be immaculately

clean and very well organized. All thermometers were in place, and all refrigerators and freezers were exceptionally clean. All foods were properly covered and stored. Their menus are good and the food was well prepared and attractively served. All kitchen rules, schedules, etc., were in order and conspicuously displayed.

I was also most intriqued by the physiotherapy Department. It is very well equipped and there too the housekeeping was very good. I was most impressed by the amount of activity in this Department. I enquired and found that they treat an average sixty-five patients and give sixty-five treatments five days a week. This certainly appeared to be a busy and well run Department.

In conclusion let me say that Town Court Nursing Center is a very well maintained and operated facility. Also I was very favorably impressed with the quality of their staff in all areas.

Very truly yours,
(s) John E. Cumiskey
John E. Cumiskey R.N.,
FACNHA

PLAINTIFFS' EXHIBIT NO. 8

40 Whitehall Road
East Brunswick, N.J. 08816

June 17, 1977

Mr. William J. Jones
752 Fay Street
Elizabeth, N.J. 07202

Dear Bill:

The following is a summary of my inspection of the four nursing stations at the Town Court Nursing Home, conducted on June 13, 1977. My report will be in three sections: General Observations, Specific Observations, and Recommendations.

A. GENERAL OBSERVATIONS

1. Town Court Nursing Home may not be the best in the world, but I have seen many that are a lot worse. The facility is clean; there was no urine odor on any of the floors; most patients were out of their rooms doing something. Each of the nursing stations was clean and orderly; no trash was visible anyplace. Nursing personnel were not just sitting around waiting for something to happen, but were with patients. Patients appeared alert and responded to greetings with warmth.

2. In general, pharmaceutical services could be improved. The Consultant Pharmacist (who is also the provider pharmacist) should spend more time in the facility. The contract between Town Court and

the Consultant Pharmacist stipulates that he will be reimbursed for expenses incurred for supplying reference material. The contract makes no reference to any payment for this time, expertise, or service. I suspect that because he is not being paid he is devoting a minimal amount of time to the facility. A facility of 190 beds requires a full 8 hour day per week of Consultant Pharmacist time (32 hours per month) rather than the 9 to 12 hours per month the Administrator claims the Consultant is giving him.

3. The Consultant Pharmacist quarterly reports (required by Federal regulations) are skimpy and really don't say anything of value.

4. Pharmaceutical policies should be contained in a separate Pharmacy Policies and Procedures Manual. If they must be included in the Nursing Manual they should at least be in one section rather than scattered throughout the Manual.

5. Stop Order Policies in the Nursing Manual are inconsistent.

On page 118:

5 Days—Narcotics and antibiotics

14 Days—Tranquilizers, stimulants, antidepressants

30 Days—All others

On Page 127:

5 Days—Antibiotics

7 Days—Anticoagulants

21 Days—Diuretics

30 Days—Hypnotics

Policy should be uniform and consistent.

B. SPECIFIC OBSERVATIONS

1. *Fifth Floor Nursing Station*

Station was neat and orderly; cabinets and refrigerator were locked as was the medication cart. There was an open box of corn starch, a bottle of *Cepacol* and a bottle of *KetoDiastix* on the counter next to the sink where a patient could get at them.

2. Patient James Morrow

Quinidine not charted at 6 PM and 10 PM on 6/11/77

Thorazine not charted at 6 PM and 10 PM on 6/11/77

Slow-K not charted at 6 PM on 6/8, 6/11, 6/12/77

Lacrilube not charted at 2 AM and 6 AM on 6/10/77

Lacrilube not charted at 6 PM and 10 PM on 6/11/77

Dalmane not charted at 10 PM on 6/5 and 6/11/77

No notations in nurses notes.

3. Clare Snyder

Chlor-Trimeton not charted 10 PM on 6/11/77

No notation in nurses notes.

4. Delphine Taddee

Feosol Spansules not charted at 6 PM on 6/4 & 6/11/77

Entozyme not charted at 6 PM on 6/4 & 6/11/77

Dilantin not charted at 6 PM on 6/11/77

Benadryl not charted at 6 PM & 10 PM on 6/4 & 6/11/77

Meprobamate not charted at 10 PM on 6/4 & 6/11/77

No notations in nurses notes.

5. Rose Frank

Tylenol not charted at 6 PM on 6/11/77

No notation in nurses notes.

6. Donato DePretore

Order reads *Lanoxin;* label says Digoxin.

No current order for *Tylenol* but there was a labeled bottle in the patient's drawer.

7. Amelia Scola

No current order for *Albalon* eye drops but there was a labeled bottle in the patients drawer dated 4/26/77.

8. *Fourth Floor Nursing Station*

A. Station was neat and orderly; everything was locked.

B. Bertha Brown

Order for *Nylmerate Douche* is not listed on Cardex.

C. John Pearson

Nurses notes indicate Kaopectate 30cc. administered 6/7/77.

No order on Physicians Order Sheet; not listed on Cardex.

D. Lela Haywood

Ferrous Sulfate ordered BID, not charted at 6 PM 6/1 through 6/12/77. Only charted at 10 AM.

E. Beatrice Applebaum

Tofranil ordered TID; blocked on Cardex BID; charted 10 AM and 6 PM. *Diamox 125 mg.* also. When I asked the nurse she said she was giving it 3 times a day and she filled in the Cardex.

F. Bertha Weinman

Order for Milk of Magnesia PRN not on Cardex.

At 12:30 PM the 3 PM and Midnight doses of Empirin Compound were already charted.

G. Regina Collins

Tylenol—2 PM dose charted at 12:30 PM.

H. Estelle Jacobs

Rx container of *Ascriptin* dated 3/16/77. Suggest D/C or replacement.

Colace RX dated 3/16/77.

I. Mary Geracitano

Ascorbic Acid RX—soiled label

Tylenol Rx dated 3/7/77 . . . soiled label

J. Mary DeMarco

Sample bottle of Haldol 1 mg., with no Rx label, in patient's drawer.

2 sample bottles of *Haldol Concentrate,* with no Rx labels, in patient's drawer. No physicians order for Concentrate.

K. Cecilia Rubeck

Lanoxin 0.125 mg. ordered every other day, labeled daily.

L. Dirty mortar and pestle in cart drawer.

M. Geneva Stevenson

Container of Aspirin . . . No Rx number or date on label.

N. Beatrice Applebaum

Nitroglycerin 1/150 gr . . . one sealed bottle dated 5/31/77, another sealed bottle dated 7/27/76?

Lable on *Pilocar* should be replaced.

O. Angelina D'Alonzo

Cogentin 1 mg. . . . label inside container. Should be affixed.

9. *Third Floor—Nursing Station*

Station was neat and orderly; everything locked.

A. Mary Lee

1. *Brethine 5mg.* ordered TID; listed on Cardex as TID but only charted 10 AM & 6 PM.
2. *Mellaril 50 mg.* ordered TID on 6/4/77 . . . charted 10 AM & 2 PM from 6/1/77. Not charted at 6 PM until 6/6/77.
3. *Phenergan 12.5 mg.* ordered 6/4/77 . . . not charted until 6/6/77.

B. Berthram Dalzeit

Chloroptic Drops ordered QID; Cardex says QID; charted TID.

C. Minnie Frank

Haldol 1 mg. ordered TID; Cardex says TID . . . charted BID.

D. Paper cups with loose tablets and/or capsules were found in drawers for: John Palo, Charles Pantalone, Clarence Gillard, Noble Green, Arthur Parrish, Berthram Dalzeit, Fannie Strucator, Minnie Frank, Eugene Lawrence, Joseph Meldru, Vincenza Valentino, Angelina Allitto, Catherine McCace, Mary Bauer.

E. External preparations (Anbesol, Hematest) were found in drawers with internal medications for Ferdinand Horle and Trathenia Counts.

F. One patient drawer was labeled for two patients: 358-1 Foster, G. and 358-2 Bauer, Mary.

10. *Second Floor Nursing Station*

Station was neat and orderly and everything was locked.

A. Abraham Carlitz

Order written for "Lax of choice". Order should be specific.

B. Nancy Truitt

Nitroglycerin bottle was corroded indicating the medication had deteriorated.

C. Prescription containers were found with loose labels inside the containers for: Margaret Watkins, Charles Grasso, Abraham Carlitz.

C. SUMMARY AND RECOMMENDATIONS

The quality of pharmaceutical services indicate a lack of supervision by nursing supervisors and/or the Director of Nursing. The charting errors I discovered should have been picked up by the staff long

before I got there. These things also indicate a need for more inspections by the Consultant Pharmacist.

I could not find any records of any in-service trainings conducted by the Consultant Pharmacist. This certainly is a must. In-service training on abbreviations (TID, QID, etc.) might reduce the number of errors.

There were no ancillary label instructions on any prescriptions except two that came from another pharmacy. These ancillary labels are now required.

Emergency kits should be inspected and updated. The list in the nursing manual still includes *Mercuhydrin* which was recalled about 2 years ago.

In summary, the facility has lots of room for improvement but I don't think they are bad enough to be decertified . . . at least not in this area. The Consultant Pharmacist should get on the ball and start doing his job and the facility should start paying him adequately.

Sincerely,

(s) Jesse

Jesse M. Gaynor, RP., M.S.

PLAINTIFFS' EXHIBIT NO. 9

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40 Whitehall Road
East Brunswick, N.J. 08816

July 19, 1977

Mr. Len Coyle
332 West State Street
Trenton, New Jersey 08618

Dear Len:

On July 18, 1977, I revisited the Town Court Nursing Home, at your request, to see what progress had been made on the problems I had found during my first inspection. I am happy to say there has been a tremendous improvement. This change is evidence of the determination of the administration and the staff, to comply with all rules, regulations, and recommendations. The improvement in pharmaceutical services is due, in great measure, to the hiring of an outside Consultant Pharmacist, Robert Larmer, who has considerable experience as a Consultant in long term care facilities. I have always felt the provider pharmacist should not also be the consultant, and the changes Mr. Larmer has been able to bring about are testimony to the validity of the separation of those duties.

This report will follow the layout of my previous report.

A. GENERAL OBSERVATIONS

1. Observations generally the same. The staff is warm and friendly and respond to patients promptly and courteously.

2. Pharmaceutical services have improved drastically. The new Consultant, being paid, will be able to devote the required amount of time to see to it that pharmaceutical services continue to improve and maintain a high quality.

3. It is too soon to see any quarterly reports, but I am confident they will be more meaningful.

4. & 5. A Pharmaceutical Policy and Procedure Manual is being prepared. I was told it should be ready in about 30 days.

B. SPECIFIC OBSERVATIONS

1. *Fifth floor nursing station*

Station was better, but an open bottle of *KetoDiastix* was still at the sink.

All doses charted properly.

B. Clare Snyder

All doses charted properly.

C. Delphine Taddee

All doses charted properly.

D. Rose Frank

All doses charted properly.

E. Donato DePretore

No current order for *Lanoxin* and there was none in the patient's drawer. No order for *Tylenol* and none in the drawer.

F. Amelia Scola

There now is an order for *Albalon* eye drops.

2. *Fourth floor nursing station*

A. Station neat and orderly; everything locked.

B. Bertha Brown

Nylmerate Douche is listed on the Treatment Cardex.

C. John Pearson

There is a physicians order for the *Kaopectate.*

D. Lela Haywood

All doses charted properly.

E. Beatrice Applebaum

Transferred to another floor.

F. Bertha Weirman

Order listed properly under "Laxatives"; all doses charted properly.

G. Regina Collins

All doses charted properly.

H. Estelle Jacobs

New bottle of *Ascriptin* in drawer.

I. Mary Geracitano

Both bottles relabeled.

J. Mary DeMarco

No samples in drawer; all prescription containers are properly labeled.

K. Cecilia Bubeck

Labeled properly.

L. Mortar and pestle were clean.

M. Geneva Stevenson

Labeled properly.

N. Beatrice Applebaum

Transferred to another floor.

O. Angelina D'Alonzo

Label properly affixed to outside of container.

3. *Third floor nursing station*

A., B., & C. All doses charted properly.

D. No loose medications were found in any drawers.

E. No external preparations were found with the oral medications,

F. Patient labeling had been corrected.

4. *Second floor nursing station*

A. Order corrected.

B. Patient just readmitted to facility from hospital. All medications new and in good shape.

C. All labels properly affixed to containers.

C. SUMMARY AND RECOMMENDATIONS

In addition to the patients listed above, I also did a spot check on numerous other patients on each floor. All charts were in order and all prescription containers were properly labeled.

Mr. Larmer is arranging for pharmacy in-service trainings.

There was a definite increase in the number of ancillary labels.

Emergency kits have been updated.

In summary, things looked very good. There were some minor problems such as eye drops being stored with oral medications; more ancillary labels would help; some labels could stand replacing, etc. In general, everything was good.

Sincerely,

(s) Jesse M. Gaynor

Jesse M. Gaynor, R.P., M.S.

PLAINTIFFS' EXHIBIT NO. 10

LEONARD H. FINKELSTEIN, D. O.

Urologic Surgery

Practice Limited To
Urology & Urologic Surgery

2 Bala Cynwyd Plaza Suite 1L20
Bala Cynwyd, Penna. 19004
Tennyson 9-1021

July 12, 1977

Mr. John W. Francks
Executive Director
Geriatric & Medical Centers, Inc.
63rd and Walnut Streets
Philadelphia, Pennsylvania

Re: Town Court Nursing Center
1526 Lombard Street
Phila., Penna. 19146

Dear Mr. Francks:

The above center was inspected by me, at your request as Executive Director of Geriatric & Medical Centers, Inc., on July 9, 1977. The main emphasis of this inspection was quality of patient care.

This was evaluated by direct patient contact, evaluation of random charts (current), direct inspection of environmental conditions, including rooms, bathrooms, shower facilities, hallway and nursing stations. Charts were evaluated regarding the following parameters:

1. Current history and physical examinations;

2. Immediate and future therapeutic goals by physician;

3. Documentation of patient status by physician and nursing personnel;

4. Social Service evaluation including current status and possible future placement to home or lower level care facility.

To accomplish the above, the following was carried out. Every room on all patient floors was personally inspected by me. Brief discussions with seventy-two randomized patients was had regarding their subjective condition. Many more patients were personally observed regarding personal hygiene, including mouth and foot care, state of clothing or gowns, and grooming. Thirty-seven bathrooms were evaluated regarding cleanliness and condition of tile, plumbing facilities, call buttons and protective railings. All shower and tub rooms on each patient floor were evaluated for the same parameters. The recreation rooms on each floor were also evaluated.

The following are my findings:

1. The hallways on the second, third, fourth and fifth floor, as well as the lobby floor, were well lit, in excellent state of repair, with new appearing wall and floor covering. Protective railings on all floors appeared to be in excellent condition.

2. All bathrooms inspected (thirty-seven), were clean. All tile appeared intact and all plumbing appeared in good order.

3. Of the seventy-two patients briefly interviewed, fourteen had vague complaints, compatible with age; none suggesting any serious problem. The remainder appeared satisfied with their condition and did not complain of their environment of the nursing facility when questioned directly regarding this matter. All seventy-two were clean, well groomed and most were ambulatory. Three patients were interviewed with decubiti, all of which were small. All three were out of bed with adequate padding over the area of ulceration. Three patients with indwelling Foley Catheters were observed. Catheters appeared to have been changed recently. Collection bags were below the pubes. No leakage of urine was evident.

4. All rooms were clean, well lit, with air conditioners functional in all but three rooms and fans were running in these. Bedding was clean in all rooms. With few exceptions, all beds were well made. Approximately twelve patients were noted in bedside chairs, restrained in posey restraints. In each case this appeared to be well justified. There was no instance of leg or arm restraint noted.

5. All shower rooms were clean, in excellent state of repair, with adequate protective seating and railings available.

6. Recreational or Television Rooms appeared to be well utilized with functional television sets present and four to six patients noted utilizing these facilities on each floor.

7. Forty charts were reviewed at random.

Fifth-Floor—Fifteen charts were reviewed. Fifteen out of fifteen demonstrated immediate

and future planning. Fifteen out of fifteen showed adequate documentation by nursing personnel. Fourteen out of fifteen showed adequate physician documentation. Fifteen out of fifteen had recent history and physical examinations charted and fifteen out of fifteen had adequate Social Service evaluation.

Fourth Floor—Ten charts were reviewed at random. Ten out of ten contained all parameters reviewed.

Third Floor—Ten charts were reviewed at random. Ten out of ten contained all parameters reviewed.

Second Floor—Five charts were reviewed at random. Five out of five contained all parameters reviewed.

It should be noted that out of one hundred and ninety-eight patients in the nursing facility, only nine patients had indwelling Foley Catheters in place. The remainder were either controlled by diaper or were continent. It is my opinion that if it were possible to carry out urodynamic testing, many of the incontinent patients could be rendered continent and the catheter patients might be rendered catheter free. This, of course, would be a factor to be determined by the attending physicians.

It should also be noted that supervisory personnel were well received by the patient population and appeared to know most patients by name and were familiar with their individual problems.

Foot care appeared to be given regularly, when needed, by a qualified Podiatrist. Although the physical and rehabilitative therapy area was not inspected by me, a large number of patients appeared to be benefiting by these facilities. All non-ambulatory patients should be evaluated routinely regarding rehabilitation, if this is not already your practice.

In summary, a floor by floor, room by room inspection was carried out by me as well as review of forty randomized charts. The thrust of the above inspection was to determine, if possible, the quality of patient care in the Town Court Nursing Center. The above findings indicate to me a well run, efficient nursing facility, practicing an extremely high level of patient care. If any further information is necessary regarding this inspection, please contact this office.

Sincerely,

(s) Leonard H. Finkelstein, D.O.

Leonard H. Finkelstein, D.O., M. Sc.
Clinical Professor of Urology and Chairman, Division of Urology, Philadelphia College of Osteopathic Medicine

LHF/pr

Leonard H. Finkelstein, D.O.
236 David Drive
Havertown, Penna. 19083

Date of Birth: July 16, 1933
Married
Three Children

CURRICULUM VITAE

EDUCATION

Graduated from Philadelphia College of Osteopathic Medicine in 1959.

Intern—Zieger Osteopathic Hospital, Detroit, Michigan in 1959-1960.

Residency in General Surgery—Zieger Osteopathic Hospital, Detroit, Michigan in 1960-1961.

Residency in Urologic Surgery—Hospital of Philadelphia College of Osteopathic Medicine in 1961-1963.

Master of Science Degree—Urology Surgery—Hospital of Philadelphia College of Osteopathic Medicine, 1963.

PROFESSIONAL CAREER

Clinical Professor of Urology, Philadelphia College of Osteopathic Medicine—Appointment July 1977—Continuing.

Associate Professor of Urology, Philadelphia College of Osteopathic Medicine—1970-1977.

Chairman, Division of Urology, Philadelphia College of Osteopathic Medicine—Appointment in 1970—Continuing.

Diplomat (Certified) Urologic Surgery, American Board of Osteopathic Surgeons, 1969.

Chairman, Professional Staff, Hospital of Philadelphia College of Osteopathic Medicine, 1974-1975.

Vice-Chairman, Urologic Section American College of Osteopathic Surgeons, 1973-1974.

Member, Committee on Recruitment, Philadelphia PSRO, 1974-1975.

Member, Board of Trustees of Pennsylvania Osteopathic Medical Association—Appointment in 1970—Continuing.

Chairman, Hospital Peer Review Committee, Pennsylvania Osteopathic Medical Association, Appointment in 1973—Continuing.

Member, Utilization Review Program Evaluation SubCommittee, Philadelphia, PSRO, 1976-1977.

Member, Monitoring Committee of Philadelphia PSRO, 1977.

Member, Insurance Review Committee, Pennsylvania Osteopathic Medical Association—Appointment in 1974—Continuing.

Delegate, Pennsylvania Osteopathic Medical Association, 1970-1977.

Chairman, Utilization Review Committee, Hospital of Philadelphia College of Osteopathic Medicine, 1969-1972.

Commissioner for Delaware County, Pennsylvania Blue Shield, 1962-1975.

Delegate, American Osteopathic Association, 1970-1975.

Council, Comprehensive Health Planning; Taskforce on Health Planning in Pennsylvania, 1973-1976.

Member, Physicians Advisory Committee to Bureau of Comprehensive Health Planning, Board of Health, State of Pennsylvania, 1976.

PAPERS

TransRectal Needle Biopsy of Prostate, Journal American Osteopathic Association, August, 1963.

Circumcaval Ureter, An Uncommon Cause of Obstructive Uropathy, Journal American Osteopathic Association, December, 1972.

Catheter Care and Maintenance, Journal Pennsylvania Osteopathic Medical Association, October 1973.

Urinary Tract Infection and Proper Indwelling Catheter Care, Journal Michigan Osteopathic Association, April, 1974.

Myosarcoma of the Prostate, D.O., April, 1974.

Malacoplakia of the Urinary Bladder, Journal American Osteopathic Association, July, 1974.

Renal Lipsarcoma, Journal American Osteopathic Association, August, 1976.

Vesicoileal Fistula: An Unusual Complication Following the Use of Formalin for Control of Refractory Post-Irradiation Bladder Hemorrhage, Journal of Urology, February, 1977.

Office Urologic Problems, Part I, Scrotal Masses, Osteopathic Medicine, March, 1977.

Office Urologic Problems, Part II, Recurrent Urinary Track Infections in Females, Osteopathic Medicine, April, 1977.

SPEAKER

American College of Osteopathic Surgeons, Urologic Section, 1963, 1964, 1966, 1967, 1969, 1970, 1971, 1973, 1974, 1976.

Urologic Seminar, Philadelphia College of Osteopathic Medicine (Speaker and Moderator), 1974, 1975, 1976.

American College of Osteopathic Physicians, November, 1975; West Virginia Osteopathic Physicians, May, 1976, *"Chronic Urinary Tract Infection."*

American College of General Practitioners, New York, N.Y., July, 1976, *"Urologic Office Problems."*

SCIENTIFIC EXHIBITS

TransRectal Needle Biopsy of Prostate, American College of Osteopathic Surgeons, 1963.

Catheter Care and Maintenance, American College of Osteopathic Surgeons, 1973.

Visual Aids in Endoscopic Urology, American College of Osteopathic Surgeons and American Osteopathic Association, October, 1975 and November, 1975.

AWARDS

Lindback-Christian Award for Distinguished Teaching, 1970; Christian, R. and Mary F. Lindback Foundation Award, June 7, 1970.

PLAINTIFFS' EXHIBIT NO. 11

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Region III

3535 Market Street
Philadelphia, Pennsylvania 19101

Office of the
Regional Director
Mailing Address
P.O. Box 13716
Philadelphia
Pennsylvania 19101

July 19, 1976

Our Reference: OLTC (19) ew
Towncourt Nursing Center
1526 Lombard Street
Philadelphia, Pennsylvania 19146
Provider No. 39-5337

Gentlemen:

This is to notify you that our letter of May 11, 1976 regarding your initial certification in the Medicare Program *was in error regarding the effective date and term of your agreement.* The Supplement had indicated that the effective date of your agreement was September 3, 1975 and that its term would be from September 3, 1975 through September 30, 1976, with an automatic cancellation date of July 31, 1976.

The Supplement to your agreement should have stated that the effective date of your agreement is *April*

14, 1976. The correct term of your agreement is April 14, 1976 through April 30, 1977 with an automatic cancellation date of July 31, 1976.

April 14, 1976 is the earliest possible effective date for your agreement. On that date a survey was performed which found you had corrected all the deficiencies which had caused the involuntary termination of your facility, which took effect October 31, 1974.

Surveys prior to the April 14, 1976 survey found that the deficiencies which had caused your termination from the program had not yet been fully corrected. Section 1866 (c) (1) of the Social Security Act and Regulation 20 CFR 405.616 precluded your readmission to the program until the reason for your termination had been removed.

Enclosed is a corrected copy of the Supplement to your Agreement.

Sincerely yours,

(s) Robert J. Taylor
Robert J. Taylor, Director
Office of Long Term Care
Standards Enforcement

Enclosure

DEFENDANTS' EXHIBIT NO. 1

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
Harrisburg, Pennsylvania 17120

May 26, 1977

Office of
Medical Programs
Mr. Donald Lewis
Administrator

Town Court Nursing Center, Inc.
1526 Lombard Street
Philadelphia, Pennsylvania 19146

Dear Mr. Lewis:

A medical review follow-up visit was made to your facility on May 9, 10, and 11, 1977.

The purpose of this visit was to review the actions taken to correct deficiencies as well as to review the care being provided Medical Assistance patients.

Enclosed is a summary report of the findings as discussed with you in the exit interview. If you have any questions, please contact us.

Sincerely,

(s) Roger A. Cutt
Roger A. Cutt, Ph.D.
Commissioner for
Medical Programs

Enclosure

5-19-77

TOWN COURT NURSING HOME
Medical Review
Follow-up Survey

The Code of Federal Regulations 45, Section 250.23, provides for medical review, including medical evaluation, of the need for care in such a facility, a written plan of care, and, when applicable, a plan of rehabilition for patients certified eligible for Medical Assistance and admitted to a skilled nursing facility: At least one inspection must be made annually, however, more frequent reviews may be based on the quality of care being rendered and the conditions of the Medical Assistance patients.

The medical review inspection includes personal contact with and observation of each Medical Assistance patient. Such review and observations are to determine the adequacy of the services available to meet their current health needs and promote the optimal physical, mental, and psychosocial functioning of the patients, the necessity and desirability of the continued placement of the Medical Assistance patient in the facility, and the feasibility of meeting their health needs through alternative institutional or non-institutional services.

Follow-up visits are made to the skilled nursing facility for correction of deficiencies found during the annual review to determine whether the facility has corrected such deficiencies in accordance with the facility's written time limited plan of correction.

Attached is a copy of the medical review final report dated February 7, 1977, following a survey conducted on December 14, 15, 16, and 17, 1976.

The follow-up survey conducted on May 9, 10, and 11, 1977, was not limited to the deficiencies reflected in the medical review final report. The total patient census for Town Court on the day of the visit was 179, 9 private patients and 170 Medical Assistance patients. Each Medical Assistance patient's clinical record was reviewed and each patient was observed and interviewed with and without staff present.

As a result of this visit, the following observations were made:

1. The admission sheet should identify whether the patient is an initial admission or readmission.

2. The diagnosis on the patient's record was incomplete.

Medications for specific medical conditions were ordered and given to the patient, however, the specific medical condition was not included in the diagnosis. Several patients were single or multiple amputees, however, the medical condition requiring the amputation was not included in the diagnosis.

3. The sixty (60) day recertification of continued medical necessity for skilled nursing care is incomplete and many are not signed by the attending physician.

The attending physician is to document and sign a progress note at least *every sixty days.* The note shall contain specific medical and/or physical conditions and the need for continued services on an inpatient basis.

4. Nurses' notes do not include documentation of follow-up for acute conditions, i.e., elevated temperature, diarrhea, nausea, and vomiting.

The acute condition is recorded, however, you cannot determine from the notes whether the condition has improved or is no longer present.

5. Attending physicians are not dating and signing monthly orders.

We did obtain a copy of the form letter notifying the attending physician of the requirement for a visit at least every thirty (30) days.

6. An Incident/Accident Report is not being completed for patient incidents involving staff or patients who have fallen with a nurses' note recording "with no apparent injury".

In addition, the Incident/Accident Report does not include a section for dating and documentation by the attending physician following examination of the patient. A copy of the Incident/Accident Report shall be placed in the patients current medical record.

7. Since a dental consultant is available, we suggest that each patient have a dental evaluation.

In addition, the dental consultant should be scheduled for an inservice program addressing daily oral hygiene.

8. Licensed personnel are to be instructed in pouring and giving medications.

Recording in the nurses' notes stated medications were borrowed from another patient's room. The consulting pharmacist should hold a scheduled inservice program for staff on the correct method of administering medications.

We are requesting that the facility submit a written plan of correction within thirty (30) days from the

date of the letter, of corrective action taken as a result of the findings.

The following positive actions have been taken by the corporation and facility to improve the physical plant as well as the quality of patient care.

1. Nursing Service—A new Director of Nursing was hired September 1, 1976, Mrs. B. Sterner, R.N., formerly employed as Director in the Baptist Home.

2. Only three (3) of the presently employed licensed nursing personnel, which total 29, were hired prior to January 28, 1976. The Director of Nursing is presently evaluating all employees' capabilities for providing nursing services commensurate with the individual patient's needs. Several employees have been suspended or have voluntarily resigned.

3. Decubiti (open pressure sores) are recorded on eight (8) patient records as healing. Those observed on bed patients were clean, dry, and healing.

4. Scheduled activities have increased as well as activities for room-bound patients. Twenty (20) patients were observed attending a scheduled program on the first floor.

5. An inservice program was held for all staff on safety measures and prevention of patient injuries.

6. A telephone plug-in monitoring system has been installed for heart pacemakers. Five (5) patients presently have pacemakers.

7. The facility has a very active Physical Therapy Program. Forty (40) patients are ordered physical

therapy. A total of 48 patients are hemiplegias, bilateral amputees, or single amputees.

8. All carpeting has been removed from patient rooms and replaced with lineoleum.

9. A larger ice making machine is being installed as requested by the Department of Health surveyor.

10. New mattresses and pillows have been or are being purchased for all of the beds in the original building.

11. Many patients were observed wearing slippers which could result in ankle edema, however, a shoe company representative is presently in the process of fitting patients with shoes treated with preservatives to prevent the absorption of urine. One patient was observed wearing new shoes.

12. Two records of expired patients were reviewed. Both patients were transferred to the hospital, one with a diagnosis of myocardial infarction, one for a bilateral inguinal herniorraphy; both hospital admissions are considered to be justifiable and customary medical practice.

The staff recently employed could continue to improve administration and health care standards if the corporation were required to submit a written agreement stating that the administrative staff presently employed receive tenure with continued support for improving services and the image of the facility.

This facility's past history of continual changeover in administration is not conducive to stability of performance or ability to provide acceptable services.

Source of Admissions to Town Court Nursing Home

Graduate Hospital	31
Hahnemann	6
Einstein (North)	5
(SE)	3
Germantown Hospital	2
Philadelphia VA	5
Presbyterian	13
PA Hospital	6
Parkview	5
University of Pennsylvania	1
Philadelphia Psychiatric	2
Moss Rehab	3
Lankenau	1
Episcopal	1
Temple	4
Philadelphia General	2
Medical College of PA	1
Memorial	1
Methodist	2
St. Joseph	1
St. Agnes	10
Center City	2
West Park	1
Metropolitan	2
Osteopathic	1
All Saints	2
Jefferson	4
Nazareth	1
Home	16
Nursing Homes	36

DEFENDANTS' EXHIBIT NO. 2

THE TOWN COURT
NURSING CENTER
1526 Lombard Street
Philadelphia, Pa. 19146
215 KI 6-5960

June 23, 1977

Roger A. Cutt, Ph.D.
Commissioner for Medical Programs
Commonwealth of Pennsylvania
Department of Public Welfare
Harrisburg, PA 17120

Dear Mr. Cutt:

As per your request we are hereby submitting our plan of correction for actions which have taken place or will take place as a result of the finding of the Medical Review follow-up visit of May 9, 10 and 11, 1977.

1. *The admission sheet should identify whether the patient is an initial admission or readmission.*

This is a good suggestion—We will note this on our admission form.

2. *The diagnosis on the patients' record was incomplete.*

Medical Records are being closely monitored by Nursing Administration to insure complete diagnosis' Inservice Program.

3. *The sixty (60) day recertification of continued medical necessity for skilled nursing care is incomplete and many are not signed by attending physician.*

This has been corrected and ongoing inservice will be continued.

4. *Nurses' notes do not include documentation of follow-up for acute conditions, i.e., elevated temperature, diarrhea, nausea and vomiting.*

Continued monitoring and inservice by Nursing Administration will insure the continued upgrading of nurses notes.

5. *Attending physicians are not dating and signing monthly orders.*

Doctors will continue to be notified of this requirement as necessary.

6. *An Incident/Accident Report is not being completed for patient incidents involving staff or patients who have fallen with a nurses' note recording "with no apparent injury". In addition, the Incident/Accident Report does not include a section for dating and documentation by the attending physician following examination of the patient. A copy of the Incident/Accident Report shall be placed in the patients current medical record.*

Attending physicians documentation on Incidents and Accidents is recorded on physicians progress notes. All incidents and accidents will be reported. The Medical Director Consultant reviews all Incident/Accident Reports, signs and dates them. A permanent file is kept for all Incident/Accident Reports.

7. *Since a dental consultant is available, we suggest that each patient have a dental evaluation. In addition, the dental consultant should be scheduled for an inservice program addressing daily oral hygiene.*

The dentist has started and will continue to give dental evaluations on each of our patients. A dental inservice was given by Dr. Berkowitz on 6/1/77.

8. *Licensed personnel are to be instructed in pouring and giving medications. Recording in the nurses' notes stated medications were borrowed from another patient's room. The consulting pharmacist should hold a scheduled inservice program for staff on the correct method of administering medications.*

The consulting pharmacist held an inservice on 6/7/77 regarding the proper administration of medications. Inservices and monitoring by both the pharmacist and by nursing administration will continue improvement in this area.

I would like to thank the survey team for their cooperative attitude and constructive suggestions during the survey. If there are any questions regarding this reply, please do not hesitate to contact me.

Thank you.

Sincerely,

(s) Donald B. Lewis
Donald B. Lewis NHA
Administrator

DBL: pah

DEFENDANTS' EXHIBIT NO. 3

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

Harrisburg, Pennsylvania 17120

February 7, 1977

Office of
Medical Programs
Mr. John Holbrook
Administrator

Town Court Nursing Center, Inc.
1526 Lombard Street
Philadelphia, Pennsylvania 19146

Dear Mr. Holbrook:

A medical review of Medical Assistance patients was conducted by the Departmental Medical Review Team on December 14, 15, 16 and 17, 1976.

The Medical Review Team's observations, findings, and recommendations, based on professional judgment and current Federal and Long Term Care Standards and Regulations, are contained in this report. The findings and recommendations are concerned specifically and exclusively with an evaluation of the care needed, the care being provided, the adequacy of the services available to meet the current health needs, and the feasibility of providing alternate institutional or noninstitutional services as needed.

Copies of this evaluation and recommendations are being forwarded to the County Board of Assistance and the Department of Health Regional Office.

Deficiencies found by the Medical Review Team, on which remedial or corrective action is indicated

and recommended, are noted on the attached summary. Major deficiencies were discussed with you at the conclusion of the visit. It is requested that you inform us within thirty days of remedial or corrective actions taken, or changes in procedures instituted, with respect to any or all deficiencies cited. If you have any questions on the substance of this report, or if we can be of any assistance in regard to effecting indicated improvements, please contact us.

Medical Assistance patients reviewed: 160 (includes 2 patients in appeal status)

Medical Assistance patients recommended for alternative care: 3

1. Complete X
2. Current X
3. Physician recommendation for admission or M.A. benefits X

CARE PLAN

1. Available on admission or on application for M.A. benefits X Some not available on admission.
2. Diagnosis (es) complete and current X
3. Symptoms, complications, functional level stated X Some are not documented.
4. Treatment objectives (goals) X
5. Physician medication orders (30-day) X

A. Appropriate tests regarding medication regimen X

B. Tests reports available Several not available; some are delayed and/or not to patients' charts.

C. Medications properly recorded Should be dated when signed by the physician.

6. Physician treatment orders (30-day) X

A. Treatments properly recorded X

7. Restorative or rehabilitative services ordered X

A. Prescribed services recorded X Several lack progress notes by physiotherapist.

8. Therapies ordered X

A. Prescribed therapies recorded X Lack progress notes by speech therapist.

9. Activities ordered New intensive program instituted.

10. Social Services X Good notes.

11. Diet X

12. Health and Safety Measures Lack physician's order for restraints on Elizabeth Poller, Rose Frank and Bessie Walker.

13. Progress notes current:

A. Physician X However, some lack documentation of symptoms and complications.

B. Nurse X Several lack activities and unusual happenings.

C. Other disciplines X Several therapists notes are lacking.

Personnel responsible for recapping physician's orders should sign the order sheet.

. . . physical recertification . . . need (60-day) X Many lack documentation.

. . . for continuing care reviewed . . . revised (as necessary) X Some lack evidence of needed revision.

Individual discharge plans X

EVALUATION OF SERVICES

Cleanliness (patient, surroundings) X However, nail care could be improved.

Decubiti Some noted—being treated.

Signs of malnutrition/dehydration X

Maintenance of optimal:

A. Physical function X

B. Mental function X

C. Psychosocial function Increased social involvement of non-ambulatory patients should be encouraged.

Required services available X

Required services being furnished X

Accessibility to special services and/or consultants X

Evidence that nursing services are being provided as documented Several medication irregularities discussed and will be corrected.

Staffing adequate (at time of visit) X

Physician services provided as needed X

Availability of emergency physician in attending physicians' absence X

Evidence of patients' satisfaction with care received X

Evidence of on-going patient evaluation per Utilization Review X

Facility cooperation in all aspects of Medical Review X

REMARKS

A need for improved safety measures is indicated since incidences of falls and injuries to patients are so numerous.

The general observation on facility operations is that the patients appear to be receiving adequate medical and nursing care.

As a result of this visit, the following recommendations are being made:

1. The patient's attending physician has the responsibility for recertification at least every 60 days as to the patient's continuing need for skilled nursing facility services. This information is to be documented by the physician on the progress report contained in the patient's chart. (Memo 68)

2. The plan of care shall include diagnosis, symptoms, complaints, and/or complications indicating the need for admission, a description of the functional level of the patient; written objectives; orders (as appropriate) for medications, treatments, restorative and rehabilitative services, therapies, activities, social services, diet, and special procedures recommended for health and safety of the patient; and plans for continuing care (including provisions for review and necessary modification of the plan) and discharge.

3. Physician's documentation is lacking on the following patients' charts:

Vincent Cataldi—progress notes make no mention of seizures on 8-23-76.

James Darrah—no follow-up on fall suffered 10-4-76 or episode of dyspnea 11-27-76.

Michael Veasey—treatment order of 12-11-76 does not specify what treatment is for.

Hugh Falls—L-Dope 250 mgm qid; however, no diagnosis of Parkinsonism or other reason given for order.

Ella Haywood—Post-op bowel resection; date and reason for surgery not documented.

Dock Tribble—repeated orders and discontinuances for physical therapy on chart; no documentation that physical therapy was given.

Russell Daub—coronary insufficiency; no ECG on chart.

Hugh Boyle—ECG in September 1976—interpreter suggests repeat of AVF; not completed.

Margaret Fletcher—skull x-ray; no reason given.

Gertrude Foster—ECG order 5-11-76—no documentation of being done—not reordered; B.P. progressively elevating—however no physician documentation concerning this problem or his intention.

Blanche Weiss—rapid weight changes monthly—132/154/134/136/154/118; deserves mention if accurately recorded.

James Darrah—Nurses notes in November 1976, indicate episodes of distress; no physician's progress notes.

4. The following patients' charts lack incident/accident reports, documentation of physician's notification and/or completion of the report by the physician. They are:

Margaret Allen—fell 7-76, report not completed by physician.

William Dee—fell 7-76, no report; 10-76, report not completed by physician.

Lillie Burtis—fell 9-76, no report.

Blanche Weiss—fell 5-76, no report or documentation that physician was notified.

Amelia Scola—fell 10-76, report not completed by physician.

Mary Geracetano—fell 9-76 and 11-76, no reports.

Bessie Walker—fell 4-76, no report.

Lena Bieber—fell 9-76, no report or x-ray report on chart.

John Pierson—fell 7-76, no report.

James Mullen—fell 8-76, 9-17, 20, 22-76, 11-3-76, no report and no documentation that physician was notified; fell 11-21-76, no report.

Rose Frank—fell 7-76, physician was notified, no safety measures ordered; fell 8-76, no documentation that physician was notified.

Fannie Blum—fell 4-76 and 8-76; no documentation of physician's notification, no physician's notes.

Bertha Brown—fell 10-76, no report on chart.

5. Since specialty consultants are available to your facility, the following consultations are being recommended:

Robert Houston, 1221895-TJ—speech therapy

Laura Stetzer, 1075715-TA—speech therapy

Angelina Bolger, 787830-TA—eye consultation

Bertram Delzeit, 1058676-TA—eye consultation

Marie Weineth, 476332-TA—eye consultation

Catherine Walters, 1078477-TA—psychiatric consultation

Isaiah Sobel, 1064880-TA—phychiatric consultation

Mary Lee, 1176390-TA—psychiatric consultation

Arnold Phillips, 1173523-TA—physical therapy

Dock Tribble, 1141748-TA—physical therapy

Donto DePretare, 1237860-TA—dental consultation

placement:

Sarah Bugash—1219874-TA
Margaret Roll—410562-TJ
Alfred Jackson—1248079-TA

A written response as to remedial or corrective actions to be taken or changes in procedures instituted with respect to the above recommendations is required within thirty days of this report.

A second copy of this final report is enclosed and should be given to the Chairman of your Utilization Review Committee.

If you do not agree with the Medical Review Team's recommendations for medical and nursing services, a written letter of appeal should be submitted within thirty days of the date of this letter.

Sincerely,

Roger A. Cutt, Ph.D.
Commissioner for
Medical Programs

Enclosure
cc: Mr. Laff

Philadelphia CBA—Att. Mr. Duress
Southeastern Region—Att: Mrs. Poppert
Norristown State Hospital

. . . .

TOWN COURT NURSING CENTER
1526 Lombard Street
Phila., Pa. 19146

February 28, 1977

Rodger Cutt, Ph.D.
Commissioner for Medical Programs
Office of Medical Affairs
Commonwealth of Pennsylvania
Department of Public Welfare
Harrisburg, Pa. 17120

re: Medical Review of MA
Patients 12/14, 15, 16, 17, 76

Dear Sir:

Following you will find the course of action taken pertaining to the communication received from your agency regarding December 14, 15, 16, 17, 1976 medical review of MA patients at Town Court.

1. In effect—December 1976.
2. Completed and in effect—January 1, 1977.
3. Corrected through Medical Direction Consultant Committee—see enclosed.
4. Corrected through on going in service and current medical evaluation studies.
5. All recommended consultations have been ordered and completed.—See enclosed.

Following find the action to be taken on patients being recommended for intermediate nursing care placement.

Sarah Bugash—1219874-TA—under appeal.

Alfred Jackson—1248079-TA—under appeal.

Margaret Roll—410562-TJ—to be transferred to ICF.

If there are more questions please feel free to contact me at Town Court Nursing Center.

Very truly yours,

(s) Donald Lewis
Donald Lewis, NHA
Administrator

ss
Enclosures

U-4

Form Approved. OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

PROVIDER NUMBER (X1): Vendor #01,00357 39-5337

FACILITY: Town Court Nursing Center

DATE SURVEY COMPLETED (X2): 3/8, 9, 10, 11/77

STREET ADDRESS, CITY, STATE, ZIP CODE: 1526 Lombard Street, Philadelphia, Pa. 19146

NOTE: This document contains a listing of the deficiencies cited by the surveying State Agency as requiring correction. This Summary Statement of Deficiencies is based on the surveyor's professional knowledge and interpretation of Medicare and/or Medicaid requirements. In the column Provider's Plan of Correction, the statements should reflect the facility's plan for corrective action and anticipated time for correction. Copies of this form will be kept on file at local Social Security and Public Assistance Offices, to be made available to the public, upon request.

(X3) SUMMARY STATEMENT OF DEFICIENCIES NOTED BY SURVEYING STATE AGENCY WITH REFERENCE CITATION	(X4) PROVIDER'S PLAN OF CORRECTION WITH TIME TABLE
Conformity with Federal, State and Local Laws 1. The written agreement with the Intermediate Care Facility has expired. F 14 Reg. 405.1120(c) 2. Two (2) Medical records reviewed lacked documentation of yearly blood and urinalysis reports. F 14 Reg. 405.1120 (c) Governing Body and Management 3. The governing body and administrator are not enforcing rules and regulations relative to the health care and safety as evidenced by lack of supervision of physician's services, nursing services and medical records. F15 XRF19 23 25 27 28 62 64 Reg. 405.1121 (c), (e), (k)	APR 18 1977 1. A written agreement was signed with Ivyridge Nursing and Conv. Home an Intermediate Care facility, on 3/16/77. 2. Existing policies and procedures are being reviewed and reinforced. Inservice training is being conducted on an ongoing basis. Thorough auditing and supervision will insure that the problem will be corrected by 5/31/77. 3. Through regular meeting with staff; ongoing dialog with the Medical Director Consultant, Administrator, and Director of Nursing; clearly outlining areas of responsibility; frequent audits and constant follow up this situation will be corrected by 4/30/77.

PROVIDER REPRESENTATIVE'S SIGNATURE: Ronald B. Lewis NHA — DATE (X5): 4/14/77

*Any deficiency statement ending with an asterisk (*) denotes a condition which the institution may be excused from correcting provided it is determined that other safeguards provide sufficient protection to the patients. The asterisk means that the surveying State Agency has recommended that the deficiency be waived for this reason. If the State Agency recommendation has been accepted, this will be noted in the right hand column opposite the deficiency statement.

FORM SSA-2567 (11-74) — 1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE — PAGE 1 OF ____

Form Approved OMB No. 72-R0931

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER: Vendor #01,00357 39-5337

(X2) MULTIPLE CONSTRUCTION: A. BUILDING _____ B. WING _____

(X3) DATE SURVEY COMPLETED: 3/8, 9, 10, 11/77

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
F41 47	Governing Body and Management (continued) 4. The facility is not complying with it's policy to have completed annual physical examinations and chest x-ray or mantoux tests on all employees. This is evidenced by: a) lack of documentation of mantoux tests or x-ray findings on twenty-two (22) out of sixty-seven (67) employee health records reviewed. b) physical examination results were lacking on two (2) out of sixty-seven employee health records reviewed. Reg. 405.1121 (e)		4. The Medical Direction Consultant Committee has reviewed the policy and procedures and has established the following: All employees are required to have a pre-employment physical examination including a Chest X-ray or Mantoux and an annual physical examination not requiring an X-ray or Mantoux except in the case of Dietary employees whose annual physical exam will require a Chest X-ray or Mantoux. Regular audits will be conducted to insure that this policy is conformed with. Correction will be completed by	5/31/77
F48 51	5. Documentation that inservice education programs were conducted for confidentiality of patient information and accident prevention was not available for review. Reg. 405.1121 (h)		5. Inservice on confidentiality of patient information was conducted on 12/27/76 and is documented. Further inservice training is to be held. Ongoing inservices regarding accident prevention are to be conducted by	5/31/77

Page 2 of ____

FORM SSA-2567A (11-75) — 1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
Vendor #01,00357 39-5337	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
P68 72 73 75 XRF66	Governing Body and Management (cont'd) 6. Procedures have not been developed, in writing to inform patients of related charges and charges not covered under titles XVIII and XIX or charges not covered in the basic per diem rate. Documentation that patients are given a quarterly accounting of financial transactions was not available for review. Three (3) patients who were observed in restraints did not have a physician's order for the restraint. The following unacceptable situations were observed: a) an aide was observed bathing a patient, while the surveyors were present, with the patient completely exposed. b) a patient was observed being pulled through the corridor (5th floor) clothed in only a bathrobe which was on backwards. The patient was exposed. c) One (1) female patient was observed being pushed in a wheelchair to the bathroom without footwear. Care was not taken to protect the patient's feet causing one foot to jam into the door.		6. Written policy and procedure has been developed to inform patients of all charges not covered in the basic per diem rate. Written policy is being developed regarding quarterly accounting of financial transactions. Will be corrected thru ongoing In-service training programs and delegating responsibility for physicians orders for use of restraints to nursing supervisors. Items 6. A thru J will be corrected thru ongoing inservice training and delegating responsibility of follow-up to nursing supervisors with monitoring by D.O.N., Asst. D.O.N., and Facility Administrator.	11/18/76 5/31/77 6/30/77 5/31/77 5/31/77

NOV 18 1977
CARE

FORM SSA-2567A (11-75) I. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE Page ___ of ___

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
39-5337 Vendor #01,00357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Governing Body and Management (cont'd) d) Two (2) patients were observed being pushed and pulled, by the same person. This caused one patient to be pulled backwards. e) Twenty-one (21) patients plus the patients in the 4th and 5th floor lounges were observed with excessively long, dirty and/or unmanicured fingernails. f) Nine (9) male patients were observed in need of a shave, as evidenced by excessive growth of beard. g) Eighteen (18) patients were observed with poor oral hygiene (i.e. food particles in teeth and/or dentures, teeth missing, food particles on mouth, lips and gums). h) Thirty-three (33) patients plus patients in the 3rd and 4th floor lounges were observed inappropriately dressed (i.e. no underwear, no shoes or socks, dispered with a towel, stained or torn clothes) i) a patient in room 510 was observed lying on her decubiti ulcer (with no dressing) in cold urine. Approximately five (5) patients were observed lying or sitting in urine.		See response on page #3	

11/18/76
NOV 18 1977
CARE

FORM SSA-2567A (11-75) I. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE Page 4 of ___

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
39-5337 Vendor 0400357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Governing Body and Management (cont'd)			
	j) A patient was observed in room 514 with what appeared to be vomitous on his on his face, shoulder and bed.		See response on page #3 ↓	
	Reg. 405.1121 (k)(2),(6),(7),(9)			
	Physician Services			
F101 102 103 104 105 106 107 109 110 111 112	Individualized rehabilitative potential of the patient was not available on forty-five (45) out of forty-five (45) medical records reviewed. Specific immediate and long term goals to meet the individual needs of the patient were not available on forty-five (45) out of forty-five (45) medical records reviewed.		Use of new forms which include individualized rehabilatative potential of patient has been approved by the Medical Direction Consultant Committee. Medical Direction Consultant Committee is to establish policy and procedure for recording specific immediate and long term goals to meet the individual needs of the patient.	6/30/77 5/31/77
YRF169 170 171 172 346 14 90 94 96	Nine (9) current medical records reviewed locked admission history and/or physical examination by the physician. Nine (9) out of forty-five (45) medical records reviewed lacked a progress note written at the time of each physician visit.		Medical Director Consultant will contact physicians by letter informing them of their responsibility regarding a. Admission History and physicals and b. progress notes to be written at time of each physician's visit.	5/31/77

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 5 of _____

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
39-5337 Vendor 0400357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Physician Services - cont'd			
	Reg. 405.1123 (a),(b) 405.1124 (d) 405.1132 (c) 405.1120 (c) 405.1122 (a)			
	Nursing Services			
F128	8. A written procedure for cleaning combs and brushes was not available for review. Reg. 405.1124 (a)		8. Procedure already in effect has been put down in writing.	4/15/77
F129 133 YRF181 182	9. Assignment sheets were not available for the 11-7 tour of duty. Reg. 405.1124 (b)(g)		9. Assignment sheets are now being completed for the 11-7 tour of duty corrected at time of survey.	3/11/77
F169 170 171 172	10. Documentation on the patient plan of care is inadequate as evidenced by the following: a) Thirty-two (32) out of forty-five(45) current records reviewed lacked activity program evaluation, goals and/or follow-up. b) Forty-five (45) out of forty-five (45) current records reviewed lacked dental evaluation and/or follow-up.		10. a. Approved full-time recreation director is in the process of completing activity program evaluations, goals, and follow ups. b. Dental Inservice for Nursing personnel scheduled for May 4,1977. As a result, nursing staff will be capable of informing doctors of	5/31/77 5/31/77

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 6 of _____

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
39-5337 Vendor 0400357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

406a

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Nursing Services - cont'd		patient's dental needs.	
XRF123 128 134 135 136	c) Twenty-eight (28) out of forty-five (45) current records reviewed lacked evaluation and/or patient counseling by the dietitian.		c. Dietary consultant is in the process of reviewing and evaluating patient's dietary needs.	5/31/77
	d) Forty-five (45) out of forty-five (45) current records reviewed la lacked specific immediate and long term goals by the physician.		d. answered in item #7, paragraph #2.	
	e) Twenty-seven (27) out of forty-five (45) current records reviewed lacked specific and/or complete nursing plans of care.		e. Monitored and corrected by Nursing supervisors. Continued monitoring and auditing to be conducted by D.O.N. and Asst. D.O.N.	4/30/77
	f) Eighteen (18) out of forty-five (45) current records reviewed lacked follow-up to identify social needs.		f. Full-time approved Social Service Worker is reviewing all patient's records to identify social needs.	5/31/77
	Reg. 405.1124(d), (a), (c)			
F1 73 174 175 176	11. Rehabilitative and restorative nursing is not being provided in accordance with the individual needs of the patients as evidenced by:		11.	10446
XRF123 128 134 135 136 161	a) patients who were in bed or in chairs were maintained in poor body alignment and positioning. b) documentation of bowel and bladder training program being		a.-c. To be corrected by ongoing Inservice training and reinforcement by Nursing supervisory personnel.	5/31/77

FORM SSA-2567A (11-75) — I. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE — Page 7 of _____

Defendants' Exhibit No. 4

323

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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39-5337 Vendor 0400357	A. BUILDING _____ B. WING _____	3/8, 9, 10,

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	Nursing Services - cont'd			10446
	followed was lacking. c) Forty-seven (47) patients who are incontinent of bowel and/or bladder are not on individualized program for training.			
	d) lack of documentation by nursing personnel of range of motion exercises given to or stroke patients and amputees.		d. Documentation of regularly scheduled exercises has been implemented.	5/31/77
	Reg. 405.1124 (e),(a),(c)			
F177 178 180	12. Nursing personnel are not aware of the nutritional needs of the patients as evidenced by the following:		12.	
XRF123 128 134 135 136	a) Two (2) patients who had a physician's order to be fed were observed eating unattended. b) lack of documentation of fluid intake for patients who had physician's orders to force fluids. c) Two (2) breakfast trays were observed at 11:30 am with only beverages consumed. Nursing personnel were unaware of who the trays belonged to d) One patient was ordered by the physician to receive eight (8) ounces of water with the meal, which was not provided.		a.-d. To be corrected thru ongoing inservice training and delegation of responsibility for these areas to Nursing Supervisors. Problems to be corrected by.....	5/31/77
	Reg. 405.1124 (f), (a),(c)			

FORM SSA-2567A (11-75) — I. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE — Page 8 of _____

Defendants' Exhibit No. 4

324

407a

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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	Nursing Services - cont'd			
F181 182 XRF123 128 134 135 136 137 279	13. Medications are administered by Licenced practical nurses by waiver, who have not passed a state approved medication course. Reg. 405.1124 (g),(a),(c) 405.1127 (d)		13. Medications are only administered by R.N.s and LGPN's as of 3/15/77.	3/15/77
F183 XRF189 190 128 134 135 136 123 263 264 267 268 279	14. The following medications were ordered by the physician but were not Available. a) Tylenol b) Phenergan (I.M.) c) Coldesene Powder d) Darven compound 65mg e) Oxcaine f) Kaopectate g) A and D Ointment h) Milk of Magnesia		14. Policy has been reviewed by Pharmacy Consultant and D.O.N.. The three-way check method has been reinforced. LICENSING, SCHEDULING APR 18 1977 CARE	5/31/77 10467
F186 XRF346 128 263 264 267 279	15. Five (5) individual medication records lacked charting of all doses of medications and treatments as ordered by the physician. Reg. 405.1124 (g),(n) 405.1132 (c) 405.1127 (a), (d)		15. D.O.N. has been consulted on this matter and responsibility of supervision has been delegated to RN supervisor.	3/31/77

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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	Nursing Services - cont'd			
F187 XRF128 279	16. Medications for afternoon administration were observed pre-poured at 9:30 a.m. for the 5th floor patients. Reg. 405.1124 (g), (a) 405.1127 (d)		16. D.O.N. consulted the medication nurse responsible. Situation corrected immediately.	3/11/77
F193 XRF346 128 279 350 352	17. Twenty-two (22) out of forty-five (45) current records reviewed lacked verbal orders signed by the physician within forty-eight (48) hours. Reg. 405.1124 (b), (e) 405.1132 (c), (d) 405.1127 (d)		17. Medical Director Consultant contacted and letters have been sent by him to all attending physicians. (letter attached)	5/31/77
F203 XRF128 279	18. The following medications were found at the patients bedside: a) One (1) tube of valisone ointment b) One (1) bottle of calamine lotion c) Two (2) tubes of zinc oxide d) One (1) bottle of alcohol e) One (1) bottle of mineral oil f) neosporin spray g) One (1) tube of preparation H h) One (1) bottle of Excedrin PM Reg. 405.1124 (i), (a) 405.1127 (d)		18. D.O.N. consulted on this matter and inservice training is in process. Responsibility for monitoring delegated to RN Supervisor. LICENSING, SCHEDULING APR 18 1977 CARE DEPT. OF HEALTH	5/31/77

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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39-5337 Vendor #01400357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

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1	Dietetic Services			
	19. The food service supervisor is not a full-time employee of the facility.		19. Approved Food Service Supervisor is a full time employee not working less than 40 hours per week.	3/11/77
F209	Reg. 405.1125 (a)			
	20. Time spent in the facility by the consulting dietitian is not sufficient to provide adequate nutritional counseling for 190 patients or continuing liaison with medical and nursing staffs.		20. Dietician consultant contacted on this matter and will arrange to provide time needed for proper dietary counseling for patients, medical and nursing staffs.	5/31/77
F213	Reg. 405.1125 (e)			
	21. Observation of the meal service revealed: a) the luncheon meal on one day of the survey was not served as planned on the menu, i.e. lettuce and tomato was not served and a substitute of equivalent nutritional value was not provided. b) A 1500 calorie diet was not served the proper exchanges as planned on the menu.		21. Dietician consulted, substitute list provided is to be supervised and monitored by full time Food Service Supervisor.	4/15/77
F221 F224	Reg. 405.1125 (b) 405.1125 (c)			

10446

LICENSING, SCHEDULING & TREATMENT
APR 28 1977
DIVISION OF LONG TERM CARE
DEPT. OF HEALTH

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

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OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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39-5337 Vendor #01400357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

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	Dietetic Services - continued			
	22. The tray identification system established to insure that each patient receives his diet as ordered is not being properly implemented, i.e. it was observed that tray identification cards are removed prior to serving patient trays therefore not allowing for identification of special diets when serving beverages and desserts.		22. Administrator has consulted with Food Service Supervisor to reinforce facilities existing policy of tray cards remaining on tray throughout complete meal service.	3/31/77
F224	Reg. 405.1125 (c)			
	23. There was no evidence that substitutes were offered to patients who were observed refusing food.		23. Problem being corrected by ongoing inservice training programs established as a result of a meeting between the Administrator, D.O.N. and Food Service Supervisor. Aides will monitor patient's trays to establish that patient is refusing food. Charge nurse obtains substitute food from dietary department.	4/15/77
F239	Reg. 405.1125 (e)			
F272 275 278	Pharmaceutical Services			
	24. The following medications were improperly labeled: a) mandelamine was ordered q.i.d. - p.r.n. was hand-written on the label. b) isordil was ordered 10mg t.i.d. - the label read one (1) tablet four (4) times a day.		24. a.-f. Correction same as item #14.	10446

LICENSING, SCHEDULING & TREATMENT
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Form Approved
OMB No. 72-R0931

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39-5337 Vendor # 01;00357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

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	Pharmaceutical Services - cont'd c) lasix was ordered to be given with orange juice - this was not indicated on the label d) tylenol was ordered two (2) tablets every four (4) hours p.r.n. - the label stated only tylenol p.r.n. e) Calamine lotion was labeled with only the patient's name f) two (2) tubes of zinc oxide had no label from the pharmacy. Reg. 405.1127 (b), (c)		LICENSING SECTION APR 18 1977	
P282 XRF97 99	25. A nurse on the fifth floor was observed administering medications without the medication cardex. Reg. 405.1127 (d) 405.1122 (b)		25. Correction same as item #16	
P290 291 293 XR346	Laboratory and Radiologic Services 26. Physician's orders were not available for all urinalysis, x-ray and/or blood tests. Documentation of physicians being informed of abnormal laboratory or radiological findings was not available on the medical record.		26. Existing policy of Physicians signing orders for all diagnostic tests is being reinforced thru Medical Direction Consultant Committee. 5/31/77 New policy and procedure has been established by Medical Direction Consultant Committee and was implemented on 3/16/77. 3/16/77	

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 13 of _____

329

412a

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

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39-5337 Vendor #01;00357	A. BUILDING _____ B. WING _____	3/8, 9, 10, 11/77

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	Laboratory and Radiologic Services - cont'd Seven (7) X-ray or laboratory tests which were ordered by the physician did not have reports of these studies available. Reg. 405.1128 (a) 405.1132 (c)		Future monitoring and supervision to be done by D.O.N. and Asst. D.O.N. D.O.N. and Asst. D.O.N. consulted on this matter. Error on part of X-ray service. Checklist established to prevent recourence of this incident. 3/31/77	
	Dental Services			
P301 302 XR F148 49	27. Documentation of the advisory dentist participating in staff development programs was not available. Reg. 405.1129 (a) 405.1121 (h)		27. Dental Consultant contacted and arrangement for staff development program has been made to commence on 5/4/77.	
	Social Services			
F316 319 XRF311	28. The consultant for social services is not qualified. Reg. 405.1130 (b)(a)		28. Agreement with qualified MSW signed 4/7/77. In addition, an approved Social Service Worker is employed on a full time basis.	

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 14 of _____

330

413a

Defendants' Exhibit No. 5

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
O.M.B No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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	Patient Activities		10546	
F330 F331	29. The activities program is not meeting the individual needs of all the patients as evidenced by patients sitting idly in the lounge areas and bedrooms on all floors. Reg. 405.1131 (b)		29. Approved full time recreational director is expanding activity program to meet patient needs.	5/31/77
F335 334 345 346 XRP347 73 81 85 521 522	**Medical Records** 30. A review of forty-five (45) inpatient medical records revealed the following: a) seventeen (17) records contained inadequate or incomplete assessment of the patients needs by the physician and/or nursing staff. b) forty-five (45) records lacked individualized assessment of the patient for discharge planning. c) forty-five (45) records lacked patient plans of care which reflect the current status of the patient and/or progress towards stated goals. d) consent forms on four (4) records were not signed by the patient and/or guardian e) two (2) records lacked nursing histories		LICENSING, CERTIFICATION & SURVEY APR 18 1977 DIVISION OF LONG TERM CARE DEPT. OF HEALTH 30. a. Existing policies reviewed and to be reinforced by supervisor, by D.O.N., and Asst. D.O.N. b. Full time social service worker is in the process of reviewing allpatients charts to develop adequate discharge planning. c. PACE approach to determining patient's goals to be established and to be complete by 6/30/77. d. Existing policy of having consent form signed by patient and/or responsible party by Admissions office has been reinforced. Situation totally corrected by 5/31/77.	5/31/77 6/30/77 6/30/77 5/31/77

331

Defendants' Exhibit No. 4

FORM SSA-2567A (11-75) I. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE Page 15 of _____

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
O.M.B No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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	Medical Records - cont'd f) monthly nursing summaries were lacking as follows: 1) twenty-eight (28) current records lacked summaries by 7-3 shift nursing personnel 2) twelve (12) current records lacked summaries by 3-11 shift nursing personnel 3) eleven (11) current records lacked summaries by 11-7 shift nursing personnel g) Eighteen (18) current records reviewed lacked one or more of the following categories of information: 1) diagnostic and/or therapeutic orders 2) observation and/or progress notes 3) reports of treatments and/or clinical findings Reg. 405.1132 (c) 405.1120 (c) 405.1121 (x)(7), (1) 405.1137 (h)		e. To be corrected by ongoing in-service program. f.(1-3) Existing policy reviewed and to be reinforced by D.O.N. and Asst. D.O.N. supervision. 10546 g. Medical Director Consultant contacted and program for correction being developed by contacting attending physicians. LICENSING, CERTIFICATION & SURVEY APR 18 1977 DIVISION OF LONG TERM CARE DEPT. OF HEALTH	5/31/77 5/15/77 5/31/77
F353 354 355 XRP346	31. Fourteen (14) out of fourteen (14) closed medical records reviewed lacked discharge summaries by the physician. Reg. 405.1132 (c), (c)		31. Discharge Summaries are required from all attending physicians and are being documented on patient's progress notes. D.O.N. and Asst. D.O.N. are auditing discharged patient's charts to insure completion.	3/30/77

332

Defendants' Exhibit No. 4

FORM SSA-2567A (11-75) I. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE Page 16 of _____

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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	Physical Environment			1 546
F366	32. Patients were observed, unattended, in patient lounges with no provisions for summoning assistance. Reg. 405.1134		32. Nurses aid to be assigned to patient lounges and/or tap bells will be provided for patients for summing assistance.	4/30/77
F388	33. The facility does not provide a means for the blind to identify hazardous areas. Reg. 405.1134 (c)(5.11)		33. Addendum to policy and procedure for handicapped patients to include tape on handles of entrances to hazardous areas. (Copy attached)	4/30/77
F389	34. The facility does not provide simultaneous audible and visual warning signals. Reg. 405.1134 (c)(5.12)		34. Waiver of Visual Warning requested from Department of Health. (Copies attached)	
F396 397 XRP366 75	35. Five (5) patients were observed in bed with the patient call bell out of reach. Patients who were observed sitting in chairs did not have call bells within reach. Privacy curtains in several patient rooms on the 2nd and 3rd floors were too short to ensure privacy in treatment and/or care. Reg. 405.1134 (e) 405.1121 (k)(9)		35. Call system available. Ongoing inservice training to Nurse's Aides to properly place patients. Cubical curtains on order.	

APR 18 1977
DIVISION OF LONG-TERM CARE
DEPT. OF HEALTH

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 12 of _____

333

416a

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
39-5337 Vendor #0400357	A. BUILDING _____ B. WING _____	March 11, 1977

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	Physical Environment - cont'd			
F416 418 419	36. The following were in need of repair: a) protective cap was missing from the bed in room 511. b) cement was cracking away from the beam in the food storage area. c) the paper was coming off the wall outside room 511. d) assist bars were not provided for the toilet in the bathroom in room511. e) Room 412 - Assist bars were not provided for the toilet, the metal door on the closet was bent and had sharp edges protruding f) Room 456 - the dresser drawer was missing a piece on the bottom g) Room 309 - the dresser drawer had no handles. h) Room 313 - radiator cover was broken i) Room 314 - side-rail on the patients bed was broken, the radiator cap was missing, the radiator cover (in the closet) was coming loose from the radiator, plaster was flaking above the radiator in the closet. j) Room 415 - the sink in the bathroom was coming away from the wall. k) Trash was observed stored in the fire exit stairwell (original building) on the 4th and 5th floors.		36. a.-u. Existing policy and procedure of using a daily quality control report to be continued by Administration, Nursing, and Maintenance Supervisor will correct the ongoing task of repairing minor physical environment problems. Supervision of corrections is the responsibility of the administrator. Copy of quality control report attached.	1 546

APR 18 1977
DIVISION OF LONG-TERM CARE
DEPT. OF HEALTH

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 13 of _____

334

417a

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
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(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
39-5337 Vendor #0400357	A. BUILDING _____ B. WING _____	March 11, 1977

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Physical Environment - cont'd l) Fifth floor dining room - burn marks were observed on the floor m) Call bells were not functioning in rooms 353 and 550. n) Room 509 - wall paper was peeling off the wall o) Room 517 - corner baseboard radiator cover was loose and the overbed light was not functioning p) Room 516 - (tub room) had broken tiles q) Room 351 - (the cover for the commode was broken r) Water fountain (3rd floor) was not working s) Room 318 - bathroom tiles were broken t) Room 554 - (tubroom) the knob was off the call bell leaving a sharp edge exposed u) Room 317 - the cord to the overbed light could not be reached by the patient. Reg. 405.1134 (i)		See response on page #18 10:44 LICENSING CONDUCTING UNIT APR 18 1977 DEPT. OF HEALTH	
F420 421 XR F41 45	37. Thermometers were not available on the nursing unit to be able to assure the proper temperature of bath and shower water. There was a strong odor of urine on the 4th and 5th floors and room 206 on the 2nd floor.		37. Water temperatures are controlled at source by central mixing valve. Water temperature at tap does not exceed 110 degrees. Thermometer will be issued to each nurse's station in order to insure proper temperature for special purposes. 5/3/77	

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 12 of _____

335

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
39-5337 Vendor #0400357	A. BUILDING _____ B. WING _____	March 11, 1977

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Physical Environment - cont'd The following unacceptable conditions were observed: a) the floor in room 508 was sticky and encrusted with food particles. b) Room 511 - a bedpan was stored on the floor under the bedside cabinet and a soiled basin was observed on the floor in the bathroom. c) Room 309 - the cubicle curtain was stained with an unidentifiable substance. d) Room 417 and 421 - had an offensive odor e) Room 552 - paper towels were not available in the bathroom, the water pitcher tray and urinal were soiled with dirt. f) Room 509 - the bathroom sink was dirty g) Room 517 - the bathroom floor was soiled h) Room 402 - the bathroom lacked paper towels i) Room 450, 451 and 452 - the bathroom floors were soiled. j) Room 412 - bedpan was observed on the bedside stand k) Fourth floor employee bathroom - sink and floor were dirty, stained		Following exit interview, a survey of facility by the Administrator and D.O.N. failed to detect any strong urine odors in the facility. This is an ongoing situation due to the fact that many patients in long term care are incontinent. 37. a.-k. Correction same as item # 36 10:44 LICENSING CONDUCTING UNIT APR 18 1977 DEPT. OF HEALTH	

FORM SSA-2567A (11-75)

1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

Page 20 of _____

336

Defendants' Exhibit No. 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
39-5337 Vendor #01400357	A. BUILDING _____ B. WING _____	March 11, 1977

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Physical Environment - cont'd E) - continued and aches were observed in both a areas. Reg. 405.1134 (j) 405.1121 (g)		See response on page # 20 [illegible] CONSULTING [illegible] UNIT APR 18 1977 DIVISION OF LONG-T[illegible] DEPT. OF	
F429 431 432 435 436 XRF97 99	Infection Control 38. A used disposable douche set was observed stored in the bedside cabinet in room 401. The tip to the foley catheter drainage bag was observed stored uncovered in a hole on the bedframe. Reg. 405.1135 (a), (b) 405.1122 (b)		D.O.N., when consulted during survey, corrected immediately, person responsible was reprimanded.	10:46 3/11/77
F429 431 432 444 446 XRF97 99	39. Procedures for the handling of clean and soiled linen are not being followed as evidenced by: a) The laundress was observed carrying clean linen, in a mesh bag, over her shoulder. b) Three (3) soiled bags of laundry were observed on the floor of the		39. a.-c. Laundress counseled by administrator and Housekeeping Supervisor. Inservice training program was conducted to insure correction.	3/31/77

Defendants' Exhibit No. 4

337

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
39-5337 Vendor #01400357	A. BUILDING _____ B. WING _____	March 11, 1977

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Infection Control - cont'd b) cont'd - laundry room. c) Clean linen, in a mesh bag, was observed on the floor in room 511. d) Clean linen was observed on soiled chairs. Clean and soiled linen were stored together on overbed tables. e) soiled chux were observed in the clean linen storage area on the 4th floor. f) the laundress also perform housekeeping duties. g) soiled linen bags were observed encrusted with an unidentifiable substance both on the inside and outside of the bags. Reg. 405.1135 (a), (b), (d) 405.1122 (b)		d.,e. Policy established and made operational for the care and handling of clean or soiled linen. Inservice training was conducted. This will be reinforced by the Nursing Supervisor and charge nurse. f. Housekeeper, when distributing linens, will change uniform and wash hands thoroughly. g. Linen supply company contacted and informed that linen bags must be laundered and cleaned for delivery.	10:46 4/30/77 3/31/77 4/30/77
F457 459	Disaster Preparedness 40. A fire drill conducted by the survey team revealed the following: a) Fifth floor - only one side was available on the old wing, patients were left unattended in the day room with		40. Fire drills and Inservice are conducted on a regular basis by a professional fire drill service. Assignments for lunch and breaks to be established in order that an adequate number of staff is on the floors at all times.	18 377

Defendants' Exhibit No. 4

338

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0931

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
Continuation Sheet

(X1) PROVIDER NUMBER	(X2) MULTIPLE CONSTRUCTION:	(X3) DATE SURVEY COMPLETED
39-5337 Vendor #01,00357	A. BUILDING _____ B. WING _____	March 11, 1977

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
	Disaster Preparedness - cont'd			
F457 459	a) cont'd - the door closed, no-one assumed a charge position and no one assumed responsibility for the retrival of records. b) Fourth floor - housekeeping personnel continued to clean, Room 404 the door was held open, patients were left unattended in the lounge, room 409,413 and no one assumed responsibility for the retrieval of records. The doors to rooms 450, 453, 451, 455 and 459 were left open. c) Second and third floors - no one assumed responsiblity for the retrieval of records. Reg. 405.1136(b)		10:46 LICENSING APR 18 1977 HEALTH CARE DEPT. OF HEALTH	
	Utilization Review			
F465 467	41. Two physicians who are not professionally involved in the cases reviewed are not always present at the utilization review committee meetings Reg. 405.1137 (b)		41. Structure of URC Meetings assures two physicians not professionally involved with the patients reviewed are present at all meetings.	3/23/77

FORM SSA-2567A (11-75) 1. HEALTH INSURANCE REGIONAL OFFICE OR OFFICE OF LONG-TERM CARE

339

422a

Defendants' Exhibit No. 4

CERTIFICATION AND TRANSMITTAL

TO BE COMPLETED BY STATE SURVEY AGENCY

1. NAME AND ADDRESS OF FACILITY
(L3) Town Court Nursing Center
(L4) 1526 Lombard Street
(L5) Philadelphia, Penna. (L6) 19146

4. TO: DHEW REGIONAL OFFICE
Reg. III
Philadelphia, Penna.

TO: TITLE XIX SINGLE STATE AGENCY
Dept. of Health
Commonwealth of Pennsylvania

5. CATEGORY OF PROVIDER / SUPPLIER (L7)

01 ☐ Gen. Hosp.	05 ☐ HHA	09 ☐ Chronic Dialysis Unit
02 ☐ Psych. Hosp.	06 ☐ Independent Lab	
03 ☐ TB Hosp.	07 ☐ Portable X-Ray	10 ☐ ICF
04 ☒ SNF	08 ☐ Outpatient PT/SP	11 ☐ IMR

6. TYPE OF ACTION (L8) X Special health survey-HEW request
1 ☐ Initial
2 ☐ Recertification
3 ☐ Reconsideration
4 ☐ Change of Ownership
5 ☐ JCAH/AOA Validation
6 ☐ JCAH/AOA Investigation

7. DATE OF APPLICATION (Initial certifications ONLY) (L9)

8. ACCREDITATION VERIFIED (Initial) (L10) 1 ☐ JCAH 2 ☐ AOA

CHANGE IN ACCREDITATION-BASED CERTIFICATION (Initial)
1 ☐ Gained Accreditation 2 ☐ Lost JCAH Accreditation
3 ☐ Lost AOA Accreditation (L11)

(a) ☐ In compliance with program requirements (If appropriate, check applicable boxes below)
(b) ☐ Not in compliance with program requirements (If Title XIX only, complete item 13)

Compliance is based on:
(1) ☐ Acceptable P.O.C.
(2) ☐ CFR sec. 405.1010 (Access provisions)
(3) ☐ P.L. 91-690 (24 Hour RN)
(4) ☐ 1861(j)(15)(7 day RN rural SNF)
and or approved waiver(s) of the following requirements:
(5) ☐ Life Safety Code
(6) ☐ ANSI (Std. A 117.1)
(7) ☐ Organized Medical Staff
(8) ☐ Patient Room Size
(9) ☐ Beds Per Room

(c) ☐ Reapproval Delayed Until. (See Remarks)
(d) ☐ SNF/ICF Cancellation Date is:
(1) ☐ Invoked
(2) ☐ Rescinded

LICENSING, SCHEDULING & TRAINING UNIT
MAR 2 3 1977
DEPT. OF HEALTH

11. SNF/ICF PERIOD OF CERTIFICATION (L13)
(a) FROM (b) TO:

(c) CANCELLATION DATE (SNF/ICF) (L14)

SUPPLEMENTAL INFORMATION ON HOSPITALS AND SNF'S NOT IN COMPLIANCE (L15)
(a) Hospital meets emergency services hospital definitions (1) ☐ Yes (2) ☐ No
(b) Facility meets 1861(e) (1) - Definition of hospital (1) ☐ Yes (2) ☐ No
(c) Facility meets 1861(j) (1) - Definition of SNF
(1) ☐ Yes (2) ☐ No (3) ☐ See attached SSA 1539 (a)

13. SUPPLEMENTAL ICF INFORMATION (L16)
(a) Completion date for ICF/LSC compliance
(b) 249.13 ICF Phase in Date

14. TOTAL OR DISTINCT PART CERTIFICATION	HOSPITALS	XVIII SNF	XVIII/XIX SNF	XIX SNF	XIX ICF	XIX IMR
BEDS CERTIFIED (L17)	(a)	(b)	(c) 198	(d)	(e)	(f)
BEDS PREVIOUSLY CERTIFIED (L18)	(g)	(h)	(i) 198	(j)	(k)	(l)

15. STATE SURVEY AGENCY REMARKS Report of Special Health Survey Attached

16. SIGNATURE Judith A. Passerin
TITLE Registered Nurse

17. DATE (L19) 11 22 77

18. SIGNATURE Jay B. Laff
TITLE Director, Division of Long Term Care

19. DATE (L20) 4 VOID

TO BE COMPLETED BY THE DHEW REGIONAL OFFICE OR SINGLE STATE AGENCY

20. DETERMINATION OF ELIGIBILITY (L21)
1 ☐ Facility is eligible to participate
2 ☐ Facility is not (or no longer) eligible to participate (If Title XIX only, complete item No. 26)

21. ☐ Facility is in compliance with Title VI of Civil Rights Act (L22)

22. ☐ Statement of financial solvency filed in accordance with regulation 405.603. (L23)

23. EFFECTIVE DATE OF (Enter All Applicable)
(a) PARTICIPATION (L24)
(b) AGREEMENT ENDING DATE (SNF) (L25)
(c) CANCELLATION DATE (SNF) (L26)
(d) SNF/ICF AGREEMENT EXTENDED UNDER SEC. 1866(e)(1)(C) OF SOCIAL SECURITY ACT UNTIL: (MAXIMUM OF 60 DAYS) (L27)
(e) TERMINATION OR NON-RENEWING DATE (L28)
(f) EMERGENCY SERVICES (L29)

24. VOLUNTARY TERMINATION (L30) 1 ☐ CLOSURE 2 ☐ WITHDRAWAL 3 ☐ OTHER (Specify)

25. INTERMEDIARY NUMBER (L31)

26. REMARKS

27. PHS REVIEW (If Any applicable)
28. DATE (L32)
29. DETERMINATION APPROVED
30. DATE (L33)

Form SSA-1539 (11-76) OFFICE OF RESEARCH & STATISTICS

DEFENDANTS' EXHIBIT NO. 5

423a

Form Approved OMB No. 72-R[illegible]

MEDICARE/MEDICAID SKILLED NURSING FACILITY SURVEY REPORT

PROVIDER NUMBER (TITLE XVIII) F1: 39-5337

VENDOR NUMBER (TITLE XIX) F2: 0400357

NAME OF FACILITY	STREET ADDRESS	CITY	COUNTY	STATE	ZIP CODE
Town Court Nursing Center	1526 Lombard St	Phila	Phila	PA	19146

SURVEYED BY F3	SURVEYOR'S PROFESSIONAL TITLE	F4 (1) ☐ INITIAL SURVEY (2) ☒ RE-SURVEY	DATE SURVEYED F5
Claire Richards	Registered Nurse	Medicare	3/5, 3/9, 3/10, 3/[illegible]
LIST ADDITIONAL SURVEYORS' NAMES F6	TITLE	Medicaid	1977
Joseph Hopkins	Registered Nurse	Licensure	
Lois Mauney	Dietitian	Title VI	
Jacqueline Stitty	Equal Opportunity Development Specialist		

F7	YES	NO	N/A	☒ MET ☐ NOT MET	EXPLANATORY STATEMENTS
				I. Compliance with Federal, State, and local laws. (405.1120) — The skilled nursing facility is in compliance with applicable Federal, State, and local laws and regulations.	13046 LICENSING, SCHEDULING & TRACKING UNIT APR 4 1977 DIVISION OF LONG TERM CARE DEPT. OF HEALTH
F8				☒ MET ☐ NOT MET	

(a) Standard: Licensure.

The facility, in any State in which State or applicable local law provides for licensing of facilities of this nature:

(1) Is licensed pursuant to such law; or

(2) If not subject to licensure, is approved by the agency of the State or locality responsible for licensing skilled nursing facilities as meeting fully the standards established for such licensing, and

(3) Except that a facility which formerly met fully such licensure requirements, but is currently determined not to meet fully all such requirements, may be recognized for a period specified by the State standard-setting authority.

FORM SSA-1569 (10-74)

1

NAME OF FACILITY: Town Court Nursing Center — 39-5337 0400357

Compliance with Federal, State and local laws (continued)

	YES	NO	N/A		EXPLANATORY STATEMENTS
F9				EXPIRATION DATE OF LICENSE: June 24, 1977	Licensed by the Commonwealth of Pennsa., Dept of Health
F10				TOTAL NUMBER OF BEDS: 198	
F11				NUMBER OF SKILLED BEDS MEDICARE: 198	
F12				NUMBER OF SKILLED BEDS MEDICAID: 198	
F13				☒ MET ☐ NOT MET	

(b) Standard: Licensure or registration of personnel.

Staff of the facility are licensed or registered in accordance with applicable laws.

F14 ☐ MET ☒ NOT MET

(c) Standard: Conformity with other Federal, State, and local laws.

The facility is in conformity with all Federal, State, and local laws relating to fire and safety, sanitation, communicable and reportable diseases, postmortem procedures, and other relevant health and safety requirements.

Title VI - Compliance 3/11/77

L.S.C - letter dated 1/4/77 survey 11/29/76 acceptable plans of correction 12/20/76

Sanitation - 12/3/76

Fire Alarm Insp - 2/24/77

Sprinkler Insp - 9/10/76

F14 The written agreement with the L.C.L facility has expired.

Cross reference pg 47, Reg 405-1132(c) - F346 deficiency "c", monthly summaries by nurse

Two pts records reviewed locked yearly CBC and urinalysis reports

FORM SSA-1569 (10-74)

2

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0460357

	YES	NO	N/A
F15 →			

☐ MET ☒ NOT MET

II. Governing body and management. (405.1121) — The skilled nursing facility has an effective governing body, or designated persons so functioning, with full legal authority and responsibility for the operation of the facility. The governing body adopts and enforces rules and regulations relative to health care and safety of patients, to the protection of their personal and property rights, and to the general operation of the facility. The governing body develops a written institutional plan that reflects the operating budget and capital expenditures plan.

F16 → ☒ MET ☐ NOT MET

(a) Standard: Disclosure of ownership.

The facility supplies full and complete information to the survey agency as to the identity (1) of each person who has any direct or indirect ownership interest of 10 per centum or more in such skilled nursing facility or who is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such skilled nursing facility or any of the property or assets of such skilled nursing facility,

(2) in case a skilled nursing facility is organized as a corporation, of each officer and director of the corporation,

and (3) in case a skilled nursing facility is organized as a partnership, or each partner; and promptly reports any changes which would affect the current accuracy of the information so required to be supplied.

F17 → CHECK TYPE OF BUSINESS ORGANIZATION

(1) ☐ INDIVIDUAL (2) ☒ CORPORATION

(3) ☐ PARTNERSHIP (4) ☐ OTHER (Specify)

If unit is a for profit corporation, list name, address and titles of each officer of corporation and those persons owning 10% or more.

Officers: David Valorie - Pres. 8059 Golden Rd Lawrenceville, N.J.
Fred Applebaum - Sec - 1867 Rolling Lane, Cherry Hill, N.J.
Dorothy Gebert - Treas - 2907 Wakefield Dr. Warren, Pa

FORM SSA-1569 (10-74)

Governing Body and Management

EXPLANATORY STATEMENTS

F15 The governing body and administrators are not enforcing rules and regulations relative to the health care and safety of the patients as evidenced by lack of supervision of physician, nursing service and medical records. (see deficiencies)

Geriatric Medical Centers, Inc.

343

3

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0460357

	YES	NO	N/A
Ownership and % Owned			

If unit is solely owned, or owned by partnership, list name(s) and address(es) of owner(s).

F18 → ☒ MET ☐ NOT MET

(b) Standard: Staffing patterns.

The facility furnishes to the State survey agency information from payroll records setting forth the average numbers and types of personnel (in full-time equivalents) on each tour of duty during at least 1 week of each quarter. Such week will be selected by the survey agency.

F19 → ☐ MET ☒ NOT MET

(c) Standard: Bylaws.

F20	X		
F21	X		
F22	X		
F23		X	

The governing body adopts effective patient care policies and administrative policies and bylaws governing the operation of the facility, in accordance with legal requirements.

Such policies and bylaws are in writing, dated, and made available to all members of the governing body which ensures that they are operational, and reviews and revises them as necessary.

FORM SSA-1569 (10-74)

Governing Body (continued)

EXPLANATORY STATEMENTS

F19
F23 cross reference F15

344

4

NAME OF FACILITY: Town Court Nursing Center — 39-5337 / 040057

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A
F24			

☒ MET ☐ NOT MET

(d) Standard: Independent medical evaluation (medical review).

The governing body adopts policies to ensure that the facility cooperates in an effective program which provides for a regular program of independent medical evaluation and audit of the patients in the facility to the extent required by the programs in which the facility participates (including, at least annually, medical evaluation of each patient's need for skilled nursing facility care).

F25			

☐ MET ☒ NOT MET

F25, 27, 28 cross reference F15

(e) Standard: Administrator.

F26	X		
F27		X	
F28		X	
F29	X		
F30	X		
F31	X		

The governing body appoints a qualified administrator who is responsible for the overall management of the facility,

enforces the rules and regulations relative to the level of health care and safety of patients, and to the protection of their personal and property rights, and

plans, organizes, and directs those responsibilities delegated to the administrator by the governing body.

Through meetings and periodic reports, the administrator maintains ongoing liaison among the governing body, medical and nursing staffs, and other professional and supervisory staff of the facility, and

studies and act upon recommendations made by the utilization review and other committees.

In the absence of the administrator, an employee is authorized, in writing, to act on the administrator's behalf.

NAME OF ADMINISTRATOR: Mr. Donald Lewis

LICENSE NUMBER: NH001390 — EXPIRATION DATE: 6/30/78

NAME OF ALTERNATE ADMINISTRATOR: Mrs. Arnold Weiner — TITLE: assist. adm.

FORM SSA-1569 (10-74)

5

345

428a

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center — 39-5337 / 040057

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A
F32			

☒ MET ☐ NOT MET

(f) Standard: Institutional planning.

The skilled nursing facility, under the direction of the governing body, prepares an overall plan and budget which provides for an annual operating budget and a capital expenditure plan.

F33	X		

(1) There is an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that it is not required that there be prepared, in connection with any budget, an item by item identification of the components of each type of anticipated income or expense).

F34	X		

(2) (i) There is a capital expenditure plan for at least a 3-year period (including the year to which the operating budget described in paragraph (f)(1) of this section is applicable), which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $100,000.

In determining if a single capital expenditure exceeds $100,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, modernization, expansion, or replacement of land, plant, building, and equipment are included. Expenditures directly or indirectly related to capital expenditures, such as grading, paving, broker commissions, taxes assessed during the construction period, and costs involved in demolishing or razing structures on land are also included. Transactions which are separated in time but are components of an overall plan or patient care objective are viewed in their entirety without regard to their timing. Other costs related to capital expenditures include title fees, permit and license fees, broker commissions, architect, legal, accounting, and appraisal fees; interest, finance, or carrying charges on bonds, notes and other costs incurred for borrowing funds.

There are no capital expenditures over 100,000

FORM SSA-1569 (10-74)

6

346

Defendants' Exhibit No. 6

429a

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N.A
F35 →			
F36 →			
F37 →			

(ii) If the anticipated source of such financing is, in any part, the anticipated reimbursement from title V (Maternal and Child Health and Crippled Children's Services) or title XVIII (Health Insurance for the Aged and Disabled) or title XIX (Grants to States for Medical Assistance Programs) of the Social Security Act, the plan states:

F35 → 1. ☐ YES 2. ☐ NO 3. ☒ N.A

(a) Whether the proposed capital expenditure is required to conform, or is likely to be required to conform, to current standards, criteria, or plans developed pursuant to the Public Health Service Act or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, to meet the need for adequate health care facilities in the area covered by the plan or plans so developed;

F36 → 1. ☐ YES 2. ☐ NO 3. ☒ N.A

(b) Whether a capital expenditure proposal has been submitted to the designated planning agency for approval pursuant to section 1122 of the Social Security Act (42 U.S.C. 1320a-1) and implementing regulations.

F37 → 1. ☐ YES 2. ☐ NO 3. ☒ N/A

(c) Whether the designated planning agency has approved or disapproved the proposed capital expenditure if it has been so presented.

FORM SSA-1569 (10-74)

7

347

430a

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N.A
F38	X		
F39 →			
F40	X		
F41 →			
F42	X		

(3) The overall plan and budget is prepared under the direction of the governing body of the skilled nursing facility by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (or chief medical officer, or patient care policies advisory group as described in §405.1122(a)) of the skilled nursing facility.

F39 → OVERALL PLAN & BUDGET PREPARED BY REPRESENTATIVES OF:
1. ☒ GOVERNING BODY 4. ☒ ADMINISTRATIVE STAFF
2. ☐ MEDICAL DIRECTOR 5. ☐ MEDICAL STAFF
3. ☒ PATIENT CARE POLICIES ADVISORY GROUP

COMPOSITION OF COMMITTEE:

NAME	TITLE
Daniel Delorio	President
Fred Applebaum	Secretary
Dorothy Erhart	Treasurer
Jos Holbrook	Administrator
Donald Lewis	Asst. Administrator

F39 Committee members as of the July, 1976.

Agnes Stewart, RN, BSN

(4) The overall plan and budget is reviewed and updated at least annually by the committee referred to in paragraph (f)(3) of this section under the direction of the governing body of the skilled nursing facility.

☐ MET ☒ NOT MET

(g) Standard: Personnel policies and procedures.

The governing body, through the administrator, is responsible for implementing and maintaining written personnel policies and procedures that support sound patient care and personnel practices.

FORM SSA-1569 (10-74)

8

348

Defendants' Exhibit No. 6

431a

NAME OF FACILITY Town Crest Nursing Center 34-5337 0400357

	YES	NO	N/A
F43	X		
F44	X		
F45		X	
F46	X		
F47		X	
F48			
F49		X	
F50	X		
F51		X	
F52	X		

Personnel records are current and available for each employee and contain sufficient information to support placement in the position to which assigned.

Written policies for control of communicable disease are in effect to ensure that employees with symptoms or signs of communicable disease or infected skin lesions are not permitted to work,

that a safe and sanitary environment for patients and personnel exists, and

incidents and accidents to patients and personnel are reviewed to identify health and safety hazards.

Employees are provided, or referred for, periodic health examinations, to ensure freedom from communicable disease.

☐ MET ☒ NOT MET

(h) Standard: Staff development.

An ongoing educational program is planned and conducted for the development and improvement of skills of all the facility's personnel, including training related to problems and needs of the aged, ill, and disabled.

Each employee receives appropriate orientation to the facility and its policies, and to the employee's position and duties.

Inservice training includes at least prevention and control of infections, fire prevention and safety, accident prevention, confidentiality of patient information, and preservation of patient dignity, including protection of the patient's privacy and personal and property rights.

Records are maintained which indicate the content of, and attendance at, such staff development programs.

Governing Body (continued)

EXPLANATORY STATEMENTS

F 41, 45 Cross reference F 420, 421

F41
F47 The facility is not complying with its policy to have completed annual physical examinations and Chest x-Ray or mantoux tests on all employees. This is evidenced by
1) Lack of documentation of mantoux test or chest x-ray findings on 22 out of 67 employee records reviewed.
2) Physical examination results were lacking on 2 out of 67 employee records reviewed.

F48, 49 Cross reference F 301, 302

F48
F51 Documentation that inservice education programs were conducted for confidentiality of patient information and accident prevention were not available for review.

FORM SSA-1569 (10-74)

9

349

NAME OF FACILITY Town Crest Nursing Center 34-5337 0400357

	YES	NO	N/A
F53			
F54	X		
F55	X		
F56	X		
F57	X		
F58	X		

☒ MET ☐ NOT MET

(i) Standard: Use of outside resources.

If the facility does not employ a qualified professional person to render a specific service to be provided by the facility, it makes arrangements to have such a service provided by an outside resource — a person or agency that will render direct service to patients or act as a consultant to the facility.

The responsibilities, functions, and objectives, and terms of agreement, including financial arrangements and charges, of each such outside resource are delineated in writing and signed by an authorized representative of the facility and the person or the agency providing the service.

Agreements pertaining to services must specify that the facility assumes professional and administrative responsibility for the services rendered.

The outside resource, when acting as a consultant, apprises the administrator of recommendations, plans for implementation, and continuing assessment through dated, signed reports,

which are retained by the administrator for followup action and evaluation of performance. (See requirement under each service — 405.1125 through 405.1132.)

LIST OUTSIDE RESOURCES BY NAME AND SPECIALTY (e.g., S. Miller, physical therapy)

Barry Chase D.O. Medical Director
Mdui Berkowitz, D.D.S.
Beatrice R. Lucas R.D. R333026
Lucille Mirabito ART #3974 Wills Eye Hospital Eye Glass
Franklin A. Weiss RP 020264
Sydney B. Golub PT 000784 Eugene Joseph LaBella, PT 001474
F.J. Vita, D.P.M. 001331
Donna R. Tenia, Speech Pathologist
Debra Ackerman Social Services Consultant
Dawn Lab - #39-8109
Clay-Chapman Medical Services, Inc. #39-9800

FORM SSA-1569 (10-74)

10

350

NAME OF FACILITY: Dixon Court Nursing Center 39-5337 040357

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A
F59			
F60	X		
F61	X		
F62			
F63	X		
F64		X	
F65	X		
F66		X	

F59 ☒ MET ☐ NOT MET

(j) Standard: Notification of changes in patient status.

The facility has appropriate written policies and procedures relating to notification of the patient's attending physician and other responsible persons in the event of an accident involving the patient, or other significant change in the patient's physical, mental, or emotional status, or patient charges, billings, and related administrative matters.

Except in a medical emergency, a patient is not transferred or discharged, nor is treatment altered radically, without consultation with the patient or, if the patient is incompetent, without prior notification of next of kin or sponsor.

F62 ☐ MET ☒ NOT MET

(k) Standard: Patients' rights.

The governing body of the facility establishes written policies regarding the rights and responsibilities of patients and,

through the administrator is responsible for development of, and adherence to, procedures implementing such policies.

These policies and procedures are made available to patients, to any guardians, next of kin, sponsoring agency(ies), or representative payees selected pursuant to section 205(j) of the Social Security Act, and Subpart Q of Part 404 of this chapter, and to the public.

The staff of the facility is trained and involved in the implementation of these policies and procedures.

F62, 64 Cross reference F15

F66 cross reference with F68, 72, 73, 7[illegible]

NAME OF FACILITY: Dixon Court Nursing Center 39-5337 040357

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A
F67	X		
F68		X	
F69	X	3/16	
F70	X		
F71	X		

These patients' rights policies and procedures ensure that, at least, each patient admitted to the facility:

(1) Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct and responsibilities;

(2) Is fully informed, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under titles XVIII or XIX of the Social Security Act, or not covered by the facility's basic per diem rate;

(3) Is fully informed, by a physician, of his or her medical condition unless medically contraindicated (as documented, by a physician, in the medical record), and is afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

(4) Is transferred or discharged only for medical reasons, or for his or her welfare or that of other patients, or for nonpayment for his or her stay (except as prohibited by titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in the medical record;

(5) Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal;

F68 Procedures have not been developed, in writing, to inform patients of related charges and Charges not covered under title XVIII and XIX or charges not covered in the basic per diem rate

3/16 [illegible]

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 33-5337 0400357

Governing Body (continued)

	YES	NO	N/A		EXPLANATORY STATEMENTS
F72		X		(6) May manage his or her personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his or her behalf should the facility accept his or her written delegation of this responsibility to the facility for any period of time in conformance with State law;	F72 Documentation that patients are given a quarterly accounting of financial transactions was not available for review
F73		X		(7) Is free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the patient from injury to self or to others;	F73 Three (3) patients observed in restraints did not have a physicians order Cross reference with 405.1124(c), F346 defining "f"
F74	X			(8) Is assured confidential treatment of personal and medical records, and may approve or refuse their release to any individual outside the facility, except in case of transfer to another health care institution, or as required by law or third-party payment contract;	
F75		X		(9) Is treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in care for personal needs;	F75 The following unacceptable situations were observed: a) an aide was observed bathing a patient, while the passages were present, with the patient completely nude. b) a patient was observed being pulled through the corridor (5th floor) with only a bathrobe on her wheelchair c) a female patient was observed being pushed in a wheelchair to the bathroom without bathroom. Care was not taken to protect the privacy that a person of same sex is not present d) two patients were observed being pushed by the same person in geri chairs one of which was being backwards see page 13A
F76	X			(10) Is not required to perform services for the facility that are not included for therapeutic purposes in the plan of care;	
F77	X			(11) May associate and communicate privately with persons of his or her choice, and send and receive personal mail unopened, unless medically contraindicated (as documented by his or her physician in the medical record);	

FORM SSA-1569 (10-74)

13

353

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 33-5337 0400357

Governing Body (continued)

EXPLANATORY STATEMENTS

a) Twenty-one (21) patients were observed with dirty, long fingernails.

b) Nine (9) male patients were observed in need of a shave, as evidenced by an excessive growth of beard.

c) Eighteen (18) patients were observed with poor oral hygiene (i.e. food particles in teeth and/or dentures, teeth missing, food particles in mouth, bad odor, gums)

d) Thirty-three (33) patients plus patients observed in the 3rd and 4th floor lounges were inappropriately dressed (i.e. no undermen, no shoes or socks, dressed with a towel, stained or torn clothes)

e) a patient in Rm 510 was observed lying on her decubitis ulcer (with no dressing) in cold urine. Approximately five (5) patients were observed lying on soiled urine

f) a patient was observed in Rm. 514 with what appeared to be vomitus on his face, shoulder and bed

LICENSING, SCHEDULING & TRAINING UNIT
APR 1 1977
Division of Long Term Care
Dept. of Health

FORM SSA-1569 (10-74)

13A

354

438a

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A	
F78	X			(12) May meet with, and participate in activities of, social, religious, and community groups at his or her discretion, unless medically contraindicated (as documented by his or her physician in the medical record);
F79	X			(13) May retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients, and unless medically contraindicated (as documented by his or her physician in the medical record); and
F80	X			(14) If married, is assured privacy for visits by his/her spouse; if both are inpatients in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician in the medical record).
				All rights and responsibilities specified in paragraphs (k)(1) through (4) of this section — as they pertain to (a) a patient adjudicated incompetent in accordance with State law, (b) a patient who is found, by his or her physician, to be medically incapable of understanding these rights, or (c) a patient who exhibits a communication barrier — devolve to such patient's guardian, next of kin, sponsoring agency(ies), or representative payee (except when the facility itself is representative payee) selected pursuant to section 205(j) of the Social Security Act and Subpart Q of Part 404 of this chapter.

355

FORM SSA-1569 (12-74)

14

439a

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Governing Body (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A	MET ☐ NOT MET ☒
F81				*(l) Standard: Patient care policies.* The skilled nursing facility has written policies to govern the continuing skilled nursing care and related medical or other services provided.
F82	X			The facility has policies, which are developed by the medical director or the organized medical staff (see §405.1122), with the advice of (and with provision for review of such policies from time to time, but at least annually, by) a group of professional personnel including one or more physicians and one or more registered nurses, to govern the skilled nursing care and related medical or other services it provides.
F83	X			The policies, which are available to admitting physicians, sponsoring agencies, patients, and the public, reflect awareness of, and provision for, meeting the total medical and psychosocial needs of patients, including admission, transfer, and discharge planning, and the range of services available to patients, including frequency of physician visits by each category of patients admitted.
F84	X			These policies also include provisions to protect patients' personal and property rights.
F85		X		Medical records and minutes of staff and committee meetings reflect that patient care is being rendered in accordance with the written patient care policies.
F86	X			And that utilization review committee recommendations regarding the policies are reviewed and necessary steps taken to ensure compliance.

F81
F85 cross reference F344, 345, 346

356

FORM SSA-1569 (12-74)

15

NAME OF FACILITY: Town Court Nursing Center — 39-5337 — 040357

	YES	NO	N/A		Governing Body (continued) — EXPLANATORY STATEMENTS
F87 →				DATE OF LAST REVIEW OF POLICIES: June 30, 1976	
F88	X			The medical director or a registered nurse is designated, in writing, to be responsible for the execution of patient care policies.	
F89			X	If the responsibility for day-to-day execution of patient care policies has been delegated to a registered nurse, the medical director serves as the advisory physician from whom this nurse receives medical guidance. (See §405.1122(b).)	
				COMPOSITION OF PATIENT CARE COMMITTEE: (List names and titles of members)	Composition of Committee as of June 30, 1976 meeting.
				Mr. Donald Lewis	
				Mrs. Steward, L.P.N. DON.	
				Mrs Bryer, L.P.N.	
				Miss Gamme,	
				Mr. Holbrook, Administrator	
				Mr. Hess, R.P. - Consulting Pharmacist	
				Dr. Lovello D.O. Medical Director	
				Mr. Fletcher	
				LIST NAME AND TITLE OF PERSON RESPONSIBLE FOR EXECUTION OF PATIENT CARE POLICIES. (If RN, list name of advisory physician.)	
				Barry Chase, D.O - medical director	

FORM SSA-1569 (10-74)

357

16

440a

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center — 39-5337 — 040357

	YES	NO	N/A		Medical Direction — EXPLANATORY STATEMENTS
F90 →				☐ MET ☒ NOT MET	F90 Cross reference F101, 103, 104, 109, 110, 111 and 112
				III. Medical direction. (405.1122) — The facility retains, effective not later than 12 full calendar months from 12/02/74, pursuant to a written agreement, a physician, licensed under State law to practice medicine or osteopathy, to serve as medical director on a parttime or full-time basis as is appropriate for the needs of the patients and the facility. If the facility has an organized medical staff, the medical director is designated by the medical staff with approval of the governing body. A medical director may be designated for a single facility or multiple facilities through arrangements with a group of physicians, a local medical society, a hospital medical staff, or through another similar arrangement. The medical director is responsible for the overall coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to patients and to maintain surveillance of the health status of employees. (See §405.1911(b) regarding waiver of the requirement for a medical director.)	
F91 →				Medical director is designated by: (1) ☒ Facility Name of Physician Barry Chase, D.O. (2) ☐ Arrangement with _____ (Specify: Local medical society by name, etc.)	
F92 →				Medical director is: (1) ☐ Full-time (2) ☑ Part-time	
F93 →				and serves 4 hours per week.	
F94 →				☐ MET ☒ NOT MET (a) Standard: Coordination of medical care.	F94, 96 Cross reference F101, 103, 104 109, 110, 111 and 112
				Medical direction and coordination of medical care in the facility are provided by a medical director.	
F95	X			The medical director is responsible for the development of written bylaws, rules, and regulations which are approved by the governing body and include delineation of the responsibilities of attending physicians.	

FORM SSA-1569 (10-74)

358

17

Defendants' Exhibit No. 6

441a

NAME OF FACILITY: Town Court Nursing Center 34-5337 c460357

Medical Direction (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A	
F96		X		Coordination of medical care includes liaison with attending physicians to ensure their writing orders promptly upon admission of a patient, and periodic evaluation of the adequacy and appropriateness of health professional and supportive staff and services.
F97 →				☐ MET ☒ NOT MET *(b) Standard: Responsibilities to the facility.* The medical director is responsible for surveillance of the health status of the facility's employees.
F98	X			Incidents and accidents that occur on the premises are reviewed by the medical director to identify hazards to health and safety.
F99		X		The administrator is given appropriate information to help ensure a safe and sanitary environment for patients and personnel.
F100	X			The medical director is responsible for the execution of patient care policies in accordance with §405.1121(i).

F97, 99
Cross reference

359

FORM SSA-1569 (10-74)

18

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 34-5337 c460357

Physician Services

EXPLANATORY STATEMENTS

	YES	NO	N/A	
F101 →				☐ MET ☒ NOT MET **IV. Physician services. (405.1123)** — Patients in need of skilled or rehabilitative care are admitted to the facility only upon the recommendation of, and remain under the care of, a physician. To the extent feasible, each patient of the patient's sponsor designates a personal physician.
F102 →				☐ MET ☒ NOT MET *(a) Standard: Medical findings and physicians' orders at time of admission.* There is made available to the facility, prior to or at the time of admission, patient information which includes current medical findings, diagnoses, and orders from a physician for immediate care of the patient.
F103		X		
F104		X		Information about the rehabilitation potential of the patient and a summary of prior treatment are made available to the facility at the time of admission or within 48 hours thereafter.
F105 →				☐ MET ☒ NOT MET *(b) Standard: Patient supervision by physician.* The facility has a policy that the health care of every patient must be under the supervision of a physician, who
F106	X			based on a medical evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of total patient care.
F107		X		
F108	X			All attending physicians are required to make arrangements for the medical care of their patients in their absence.
F109		X		The medical evaluation of the patient is based on a physical examination done within 48 hours of admission unless such examination was performed within 5 days prior to admission.
F110		X		The patient is seen by the attending physician at least once every 30 days for the first 90 days following admission.

F101, 102, 104 Individualized rehabilitative potential of the patient was not available on forty-five (45) out of forty-five (45) medical records reviewed - cross reference F169, 170, 171, 172, 346 a.

F101, 105 F107 Specific immediate and long term goals to meet the individual need of the patient were not available on forty-five (45) out of forty-five (45) medical records reviewed cross reference F346 a.

F101, 103, 102, 105 F109 Nine (9) current medical records reviewed lacked admission history and/or physical cross reference F346 a.

F110
Cross reference F14

360

FORM SSA-1569 (10-74)

19

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Physician Services (continued)

EXPLANATORY STATEMENTS

Cross reference F14, 346 "A"
F112 - Nine(19) out of forty-five active medical records had only blocked progress notes being written at the time of each visit. The facility does not have alternate schedule of visits

	YES	NO	N/A	
F111		X		The patient's total program of care (including medications and treatments) is reviewed during a visit by the attending physician at least once every 30 days for the first 90 days, and revised as necessary.
F112		X		A progress note is written and signed by the physician at the time of each visit, and all orders are signed by the physician.
F113	X			Subsequent to the 90th day following admission, an alternate schedule for physician visits may be adopted where the attending physician determines and so justifies in the patient's medical record that the patient's condition does not necessitate visits at 30-day intervals
F114	X			This alternate schedule does not apply for patients who require specialized rehabilitative services, in which case the review must be in accordance with 405.1126(b).
F115	X			At no time may the alternate schedule exceed 60 days between visits.
F116	X			If the physician decides upon an alternate schedule of visits of more than 30 days for a patient, (1) in the case of a Medicaid benefits recipient, the facility notifies the State Medicaid agency of the change in schedule, including justification, and (2) the utilization review committee or the medical review team (see 405.1121(d)) promptly reevaluates the patient's need for monthly physician visits as well as the continued need for skilled nursing facility services (see 405.1137(d)).
F117	X			If the utilization review committee or the medical review team does not concur in the schedule of visits at intervals of more than 30 days, the alternate schedule is not acceptable.

FORM SSA-1569 (10-74)

361

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Physician Services (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A	
F118				LIST NUMBER OF SKILLED NURSING PATIENTS ON ALTERNATE SCHEDULE OF VISITS: MEDICARE: 0
F119				MEDICAID: 0
F120				WERE ALTERNATE SCHEDULES APPROVED BY UR COMMITTEE? (1) ☐ YES (2) ☐ NO (3) ☒ N/A
F121				WAS STATE MEDICAID AGENCY NOTIFIED (as applicable)? (1) ☐ YES (2) ☐ NO (3) ☒ N/A
F122				☒ MET ☐ NOT MET

(c) Standard: Availability of physicians for emergency patient care.

The facility has written procedures, available at each nurses station, that provide for having a physician available to furnish necessary medical care in case of emergency.

FORM SSA-1569 (10-74)

362

Defendants' Exhibit No. 6

NAME OF FACILITY: Four Count Nursing Center 39-5337 0400357

	YES	NO	N/A
F123			
F124			
F125	X		
F126		X	
F127	X		
F128		X	

V. **Nursing services. (405.1124)** — The skilled nursing facility provides 24-hour service by licensed nurses, including the services of a registered nurse at least during the day tour of duty 7 days a week. There is an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing needs of all patients. (See §405.1911(a) regarding waiver of the 7-day registered nurse requirement.)

☐ MET ☒ NOT MET

(a) Standard: Director of nursing services.

The director of nursing services is a qualified registered nurse employed full-time

Has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff, and serves only one facility in this capacity.

If the director of nursing services has other institutional responsibilities, a qualified registered nurse serves as assistant so that there is the equivalent of a full-time director of nursing services on duty.

The director of nursing services is responsible for the development and maintenance of nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, written job descriptions for each level of nursing personnel, scheduling of daily rounds to see all patients, methods for coordination of nursing services with other patient services, for recommending the number and levels of nursing personnel to be employed, and nursing staff development. (See 405.1121(h).)

NAME AND REGISTRATION NUMBER OF DIRECTOR OF NURSING:
Mrs. Bernadine Sterner
RN 054293

Nursing Services

EXPLANATORY STATEMENTS

F123 Cross reference F124, 129, 134, 169, 173, 177, 181, 189

F128 A written procedure for cleaning combs and brushes was not available Cross reference F134, 135, 136, 169, 173, 174, 175, 176, 177, 178, 180, 181, 182, 186, 187, 189, 190, 193, 203

363

FORM SSA-1569 (12-74)

22

NAME OF FACILITY: Four Count Nursing Center 39-5337 0400357

	YES	NO	N/A
F129			
F130	X		
F131	X		
F132	X		
F133		X	
F134			
F135		X	
F136		X	

☐ MET ☒ NOT MET

(b) Standard: Charge nurse.

A registered nurse, or a qualified licensed practical (vocational) nurse, is designated as charge nurse by the director of nursing services for each tour of duty

Is responsible for supervision of the total nursing activities in the facility during each tour of duty.

The director of nursing services does not serve as charge nurse in a facility with an average daily total occupancy of 60 or more patients.

The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific patients during each tour to duty, on the basis of staff qualifications, size, and physical layout of the facility, characteristics of the patient load, and the emotional, social, and nursing care needs of patients.

☐ MET ☒ NOT MET

(c) Standard: Twenty-four-hour nursing service.

The facility provides 24-hour nursing services which are sufficient to meet total nursing needs and which are in accordance with the patient care policies developed as provided in 405.1121(l).

The policies are designed to ensure that each patient receives treatments, medications, and diet as prescribed, and rehabilitative nursing care as needed; receives proper care to prevent decubitus ulcers and deformities, and is kept comfortable, clean, well-groomed, and protected from accident, injury, and infection; and encouraged, assisted, and trained in self care and group activities.

Nursing Services (continued)

EXPLANATORY STATEMENTS

F133 129 Assignment sheets were not available for the 11-7 tour of duty Cross reference F 181, 182

F134, 135, 136 Cross reference F169, 173, 177, 181, 189

364

FORM SSA-1569 (10-74)

23

NAME OF FACILITY: Grun Court Nursing Center 39-5337 6400357

Nursing Services (continued)

	YES	NO	N/A
F137		X	
F138	X		

Nursing personnel, including at least one registered nurse on the day tour of duty 7 days a week, licensed practical (vocational) nurses, nurse aides, orderlies, and ward clerks, are assigned duties consistent with their education and experience, and based on the characteristics of the patient load.

Weekly time schedules are maintained and indicate the number and classifications of nursing personnel including relief personnel, who worked on each unit for each tour of duty.

(If a distinct part certification, in an ICF or uncertified facility, show the staffing for the DP, and if appropriate, the entire facility and explain any sharing of nursing personnel.)

EXPLANATORY STATEMENTS

This facility has Jewish, nursing stations
F131 Cross reference F181, 182

LPN waiver examination

LIST THE NUMBER OF FULL-TIME EQUIVALENTS OF RN'S, LPN'S, AIDES, ORDERLIES ASSIGNED TO NURSING DUTY FROM THE LAST 3 COMPLETE WEEKS AVAILABLE:

SHIFT		17 SUN. T			18 MON. F			19 TUES. S			20 WED. S			21 THURS. M			22 SAT. T			23 SUN. W		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DP	DAY																					
ENTIRE FAC.	DAY	4	0/3	19	2	0/4	21	3	0/2	20	3	0/2	21	1	0/4	27	1	0/5	25	2	0/5	26
DP	EVENING																					
ENTIRE FAC.	EVENING	2	0/3	15	1	0/4	16	3	0/2	15	3	0/2	15	2	0/4	19	1	0/3	20	1	0/4	20
DP	NIGHT																					
ENTIRE FAC.	NIGHT	1	0/4	11	2	1/2	10	1	1/2	12	1	1/2	10	1	0/3	13	1	1/3	13	1	1/3	11
		2.6			2.7			2.5			2.5			3.1			3.1			3.1		

Ft. Care Hours

SHIFT		24 SUN. T			25 MON. F			26 TUES. S			27 WED. S			28 THURS. M			29 SAT. T			30 SUN. W		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DP	DAY																					
ENTIRE FAC.	DAY	3	0/4	22	2	0/5	22	3	0/3	20	3	0/3	22	5	0/3	22	2	0/3	20	2	0/4	22
DP	EVENING																					
ENTIRE FAC.	EVENING	1	0/4	15	1	0/4	18	1	0/3	20	1	0/3	20	1	0/3	18	1	0/4	18	1	0/4	18
DP	NIGHT																					
ENTIRE FAC.	NIGHT	1	1/2	11	1	1/3	12	1	1/2	8	1	0/4	8	1	0/3	11	2	1/2	12	1	1/2	10
		2.7			2.9			2.6			2.7			2.8			2.7			2.7		

Ft. Care Hours

FORM SSA-1569 (10-74)

24

NAME OF FACILITY: Grun Court Nursing Center 39-5337 6400357

Nursing Services (continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A
F145			
F146			
F147			
F148			
F149			
F150			

SHIFT		3 SUN. T			4 MON. F			5 TUES. S			6 WED. S			7 THURS. M			8 SAT. T			9 SUN. W		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DP	DAY																					
ENTIRE FAC.	DAY	3	0/4	19	3	0/2	20	2	0/2	20	2	0/2	19	3	0/4	18	3	0/5	20	3	0/4	20
DP	EVENING																					
ENTIRE FAC.	EVENING	1	0/5	13	1	0/4	18	2	0/3	17	2	0/3	18	2	0/4	19	2	0/3	19	1	0/3	19
DP	NIGHT																					
ENTIRE FAC.	NIGHT	1	1/2	12	1	1/2	9	2	0/2	11	1	1/2	10	1	1/3	11	1	1/2	11	1	1/2	11
		2.8			2.5			2.6			2.6			2.7			2.7			2.7		

Ft. Care Hours

Is Director of Nursing included in above schedule?

F151 → 1. ☐ YES 2. ☒ NO

	NUMBER	
F152	190	PATIENT CENSUS ON DATE OF SURVEY.
F153	2	NUMBER OF COMPLETELY BEDFAST PATIENTS.
F154	34	NUMBER OF PATIENTS REQUIRING NO ASSISTANCE WITH AMBULATION
F155	57	NUMBER OF PATIENTS REQUIRING ASSISTANCE WITH AMBULATION (I.E. WHEELCHAIR, WALKER, CANE, ETC.)
F156	15	NUMBER OF PATIENTS REQUIRING FULL ASSISTANCE IN EATING.
F157	49	NUMBER OF PATIENTS REQUIRING SOME ASSISTANCE IN EATING.
F158	11	NUMBER OF PATIENTS WITH INDWELLING CATHETERS
F159	93	NUMBER OF INCONTINENT PATIENTS (BOWEL AND/OR BLADDER).
F160	9	NUMBER OF PATIENTS WITH DECUBITI.
F161	46	NUMBER OF PATIENTS ON INDIVIDUALLY WRITTEN BOWEL AND BLADDER RETRAINING PROGRAM
F162	112	NUMBER OF PATIENTS RECEIVING SPECIAL SKIN CARE
F163	147	NUMBER OF CONFUSED OR DISORIENTED PATIENTS
F164	0	NUMBER OF PATIENTS RECEIVING INTRAVENOUS THERAPY AND/OR BLOOD TRANSFUSION.
F165	92	NUMBER OF BED-TO-CHAIR PATIENTS.

F161 Cross reference F173

PATIENT CENSUS:

F166 MEDICARE	7
F167 MEDICAID	168
F168 OTHER	15

FORM SSA-1569 (10-74)

25

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

	YES	NO	N/A
F169			
F170		X	
F171		X	
F172		X	
F173			
F174		/	
F175		X	
F176		X	
F177			
F178		X	
F179	X		
F180		X	

☐ MET ☒ NOT MET

(d) Standard: Patient care plan.

In coordination with the other patient care services to be provided, a written patient care plan for each patient is developed and maintained by the nursing service consonant with the attending physician's plan of medical care, and is implemented upon admission.

The plan indicates care to be given and goals to be accomplished and which professional service is responsible for each element of care.

The patient care plan is reviewed, evaluated, and updated as necessary by all professional personnel involved in the care of the patient.

☐ MET ☒ NOT MET

(e) Standard: Rehabilitative nursing care.

Nursing personnel are trained in rehabilitative nursing.

The facility has an active program of rehabilitative nursing care which is an integral part of nursing service and is directed toward assisting each patient to achieve and maintain an optimal level of self-care and independence.

Rehabilitative nursing care services are performed daily for those patients who require such service, and are recorded routinely.

☐ MET ☒ NOT MET

(f) Standard: Supervision of patient nutrition.

Nursing personnel are aware of the nutritional needs and food and fluid intake of patients and assist promptly where necessary in the feeding of patients.

A procedure is established to inform the dietetic service of physicians' diet orders and of patients' dietetic problems.

Food and fluid intake of patients is observed, and deviations from normal are recorded and reported to the charge nurse and the physician.

FORM SSA-1569 (10-74) 26

367

Nursing Services (continued)

EXPLANATORY STATEMENTS

F169, 170, 171, 172

Documentation on the pt plans of care is inadequate because of the following:
a) 32 out of 45 current records reviewed lacked activity program evaluations, goals and/or follow-up
b) 45 out of 45 current records reviewed lacked dental evaluation and/or follow-up
c) 28 out of 45 records reviewed lacked evaluation and/or pt counseling by the dietitian
d) 45 out of 45 current records lacked specific immediate and long term goals by the physician
e) 27 out of 45 current records reviewed lacked specific and/or complete nursing plans of care.
f) 18 out of 45 current records reviewed lacked follow up to identify social needs.

F173, 174, 175, 176

Cross reference F 346
See page 26A "a" "c" "e" "f"

F177, 178, 180 Nursing personnel are not aware of the nutritional needs of the pts as evidenced by the following:
a) Pt's [illegible] ordered by the physician, to be fed this pt was observed eating unattended
b) physicians ordered force fluids - there was no [illegible] found
c) Weight chart [illegible] at 11 pm unit only licensed [illegible] - nurses aid not keep

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

	YES	NO	N/A
F173			
F174			
F175			
F176			

☐ MET ☐ NOT MET

(e) Standard: Rehabilitative nursing care.

Nursing personnel are trained in rehabilitative nursing.

The facility has an active program of rehabilitative nursing care which is an integral part of nursing service and is directed toward assisting each patient to achieve and maintain an optimal level of self-care and independence.

Rehabilitative nursing care services are performed daily for those patients who require such service, and are recorded routinely.

368

Nursing Services (continued)

EXPLANATORY STATEMENTS

F173, 174, 175, 176

Rehabilitative and restorative nursing is not being provided in accordance with the needs of individual the patients as evidenced by:
a) patients who incur is bed or in chairs were maintained in good body alignment and positioning
b) documentation of bowel and bladder training programs being followed was lacking
c) forty-seven patients who are incontinent of bowel and/or bladder are not on an individual program for training.
d) lack of documentation of range of motion exercises for stroke patients and amputees.

FORM SSA-1569 (10-74) 26 A

NAME OF FACILITY: Pine Court Nursing Center — 39-5337 — 040357

Nursing Services (continued)

	YES	NO	N/A
F181			
F182		X	
F183		X	
F184	X		
F185	X		
F186		X	
F187		X	
F188	X		
F189			
F190		X	
F191	X		
F192	X		
F193		X	
F194	X		

369

☐ MET ☒ NOT MET

(g) Standard: Administration of drugs.

Drugs and biologicals are administered only by physicians, licensed nursing personnel, or by other personnel who have completed a State-approved training program in medication administration.

Procedures are established by the pharmaceutical services committee (see 405.1127(d)) to ensure that drugs are checked against physicians' orders.

The patient is identified prior to administration of a drug.

Each patient has an individual medication record.

The dose of a drug administered to that patient is properly recorded therein by the person who administers the drug.

Drugs and biologicals are administered as soon as possible after doses are prepared.

Administered by the same person who prepared the doses for administration, except under single unit dose package distribution systems. (See 405.1101(h).)

☐ MET ☒ NOT MET

(h) Standard: Conformance with physicians' drug orders.

Drugs are administered in accordance with written orders of the attending physician.

Drugs not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies.

Physicians' verbal orders for drugs are given only to a licensed nurse, pharmacist, or physician and are immediately recorded and signed by the person receiving the order. (Verbal orders for Schedule II drugs are permitted only in the case of a bona fide emergency situation.)

Such orders are countersigned by the attending physician within 48 hours.

The attending physician is notified of an automatic stop order prior to the last dose so that the physician may decide if the administration of the drug or biological is to be continued or altered.

EXPLANATORY STATEMENTS

F181, 182 Licensed practical nurses by nurses who have not passed a State approved medication course are administering medication.

F183 The following medications were ordered by the physician but were not available
a) Tylenol
b) Phenergan (Sup)
c) Calicaine powder, d) Band d ointment
e) Darvon Compound 65 mg
f) Orenic
g) Kaopectate and f) Milk of Magnesia

F186 Five submitted medication records lacked consistent charting of medications which were ordered (cross reference F346 "G" attached) F187 "Medications for administration to the patients on the lifted floor were observed pre-packed at 9:30 am

F189, 190 Cross reference with F183

F193 Twenty-two (22) out of forty-five (45) records reviewed lacked verbal orders signed within 48 hours CX 346

FORM SSA-1569 (10-74)

27

NAME OF FACILITY: Pine Court Nursing Center — 39-5337 — 040357

Nursing Services (continued)

	YES	NO	N/A
F195			
F196			
F197			
F198			
F199			
F200			
F201			
F202	X		
F203		X	
F204	X		
F205	X		
F206	X		

370

Stop-order policies for following are:

Narcotics 5 days
Anti-coagulants 14 days
Antibiotics 5 days
Barbituates 30 days
Review of (No.) 49 charts indicates stop-order policies are observed:
1. ☒ YES 2. ☐ NO

☒ MET ☐ NOT MET

(i) Standard: Storage of drugs and biologicals.

Procedures for storing and disposing of drugs and biologicals are established by the pharmaceutical services committee.

In accordance with State and Federal laws, all drugs and biologicals, are stored in locked compartments under proper temperature controls.

Only authorized personnel have access to the keys.

Separately locked, permanently affixed compartments are provided for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention & Control Act of 1970 and other drugs subject to abuse, except under single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

An emergency medication kit approved by the pharmaceutical services committee is kept readily available.

EXPLANATORY STATEMENTS

F203 The following medications were found at patients bedsides:
a) 2 cans of Caldisene powder
b) Valisone ointment - 1 tube
c) Calamine lotion - 1 bottle
d) 2 tubes of Zinc oxide
e) Alcohol - 1 bottle
f) mineral oil - 1 bottle
g) Neosporin spray
h) Arpuration-N - 1 tube
i) Sperdric Rx - 1 bottle

FORM SSA-1569 (10-74)

28

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Dietetic Services

EXPLANATORY STATEMENTS

	YES	NO	N/A
F207			

☒ MET ☐ NOT MET

VI. Dietetic services. (405.1125) — The skilled nursing facility provides a hygienic dietetic service that meets the daily nutritional needs of patients, ensures that special dietary needs are met, and provides palatable and attractive meals. A facility that has a contract with an outside food management company may be found to be in compliance with this condition provided the facility and/or company meets the standards listed herein.

F208 ☐ MET ☒ NOT MET

(a) Standard: Staffing.

F209		X	
F210	X		
F211	X		
F212	X		
F213		X	

Overall supervisory responsibility for the dietetic service is assigned to a full-time qualified dietetic service supervisor.

If the dietetic service supervisor is not a qualified dietitian the dietetic service supervisor functions with frequent, regularly scheduled consultation from a person so qualified. (See 405.1121(i).)

In addition, the facility employs sufficient supportive personnel competent to carry out the functions of the dietetic service.

Food service personnel are on duty daily over a period of 12 or more hours.

If consultant dietetic services are used, the consultant's visits are at appropriate times, and of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, patient counseling, guidance to the supervisor and staff of the dietetic service, approval of all menus, and participation in development or revision of dietetic policies and procedures and in planning and conducting inservice education programs (see 405.1121(h).)

F209 The food service supervisor is not a full-time employee of the facility.

F213 Time spent in the facility by the consulting dietitian is not sufficient to provide adequate nutritional counseling for 190 patients & continuing liaison with medical and nursing staffs.

371

FORM SSA-1569 (10-74)

29

454a

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Dietetic Services (Continued)

EXPLANATORY STATEMENTS

NAME OF PERSON RESPONSIBLE FOR DIETARY SERVICE: Mr. William Fagan

QUALIFICATIONS: Completed Food Service Supervisor Course (90 hours) at Burlington County Vocational and Technical School 4/76

IF ABOVE PERSON IS NOT A QUALIFIED DIETITIAN, GIVE NAME OF CONSULTANT DIETITIAN: Mrs. Beatrice Lucas

FREQUENCY OF CONSULTATION: 8 -> 16 HOURS PER ~~WEEK~~ MONTH

CONSULTANT'S ADA NUMBER, IF ANY: R333026

F214

GIVE FULL TIME EQUIVALENTS

SHIFT 1	POSITION	S	M	T	W	T	F	S
HOURS OF SHIFT	6:00 AM TO 2:30 PM	3/6	3/7	3/8	3/9	3/10	3/11	3/12
F215	COOKS	1	1	1	1	1	1	1
F216 TO (E.G. 6 AM TO 1 PM)	HELPERS	3	3	3	3	3	3	3

SHIFT 2	POSITION	S	M	T	W	T	F	S
HOURS OF SHIFT	1:00 PM TO 7:30 PM							
F217	COOKS	1	1	1	1	1	1	1
F218 TO	HELPERS	3	4	3	4	3	4	3

F219 IF SUPERVISOR IS ALSO COOK, INDICATE NUMBER OF HOURS DEVOTED TO SUPERVISION. (DO NOT INCLUDE THESE HOURS IN ABOVE CHART.)

F220 CONTRACT WITH FOOD MANAGEMENT COMPANY: (1) ☒ NONE (2) ☐ ALL OF SERVICE (3) ☐ PART OF SERVICE

DESCRIBE SCOPE OF SERVICE PROVIDED UNDER CONTRACT: N/A

372

FORM SSA-1569 (10-74)

30

455a

Defendants' Exhibit No. 6

NAME OF FACILITY: Thorn Court Nursing Center 39-5337 0400357

	YES	NO	N/A	QUALIFICATIONS OF CONTRACT DIETITIAN:
				N/A

F221 → ☐ MET ☒ NOT MET

(b) Standard: Menus and nutritional adequacy.

Menus are planned and followed to meet nutritional needs of patients in accordance with physicians' orders and, to the extent medically possible, in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council National Academy of Sciences.

F222 → ☐ MET ☒ NOT MET

(c) Standard: Therapeutic diets.

	YES	NO	N/A
F223	X		
F224		X	
F225	X		

Therapeutic diets are prescribed by the attending physician.

Therapeutic menus are planned in writing, and prepared and served as ordered, with supervision or consultation from the dietitian and advice from the physician whenever necessary.

A current therapeutic diet manual approved by the dietitian is readily available to attending physicians and nursing and dietetic service personnel.

NAME OF DIET MANUAL(S) AND DATE PUBLISHED: Thorn Court Diet Manual - 1976

F226 → NUMBER OF REGULAR DIETS: 124

F227 → NUMBER OF THERAPEUTIC DIETS: 66

F228 → NUMBER OF MECHANICALLY ALTERED DIETS: 23

F229 → NUMBER OF TUBE FEEDINGS: 0

373

FORM SSA-1569 (10-74)

Dietetic Services (Continued)

EXPLANATORY STATEMENTS

F221 F224 Observation of the meal service revealed:

a) the luncheon meal on one day of the survey was not served as planned on the menu, i.e. lettuce and tomato was not served and a substitute of equivalent nutritional value was not provided

b) a 1500 calorie diet was not served the proper sherbet as planned on the menu.

F222 F224 The tray identification system established to insure that each patient receives his diet as ordered is not being properly implemented, i.e. it was observed that tray identification cards are removed prior to serving patient trays not allowing for identification of special diets when serving beverages and desserts

31

NAME OF FACILITY: Thorn Court Nursing Center 39-5337 0400357

	YES	NO	N/A
F230			
F231	X		
F232	X		

F230 → ☒ MET ☐ NOT MET

(d) Standard: Frequency of meals.

At least three meals or their equivalent are served daily, at regular hours, with not more than a 14-hour span between substantial evening meal and breakfast.

To the extent medically possible, bedtime nourishments are offered routinely to all patients.

LIST THE TIMES MEALS ARE SERVED

F233 → BREAKFAST 7:30 AM

F234 → LUNCH 12:00 NOON

F235 → DINNER 5:30 PM

F236 → OTHER 4:00 PM EVENING NOURISHMENT

F237 → ☐ MET ☒ NOT MET

(e) Standard: Preparation and service of food.

	YES	NO	N/A
F238	X		
F239		X	

Foods are prepared by methods that conserve nutritive value, flavor, and appearance, and are attractively served at the proper temperatures and in a form to meet individual needs.

If a patient refuses food served, appropriate substitutes of similar nutritive value are offered.

F240 → ☒ MET ☐ NOT MET

(f) Standard: Hygiene of staff.

	YES	NO	N/A
F241	X		
F242	X		
F243	X		

Dietetic service personnel are free of communicable diseases

They practice hygienic food-handling techniques.

In the event food service employees are assigned duties outside the dietetic service, these duties do not interfere with the sanitation, safety, or time required for dietetic work assignments. (See 405.1121(g).)

374

FORM SSA-1569 (10-74)

Dietetic Services (Continued)

EXPLANATORY STATEMENTS

F237 F239 There was no evidence that substitutes were offered to patients who were observed refusing food.

32

NAME OF FACILITY: Sioux Court Nursing Center 39-5337 040357

Dietetic Services (Continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A
F244 →			
F245	X		
F246	X		
F247	X		
F248	X		

☒ MET ☐ NOT MET

(g) Standard: Sanitary conditions.

Food is procured from sources approved or considered satisfactory by Federal, State, or local authorities.

Stored, prepared, distributed, and served under sanitary conditions.

Waste is disposed of properly.

Written reports of inspections by State and local health authorities are on file at the facility, with notation made of action taken by the facility to comply with any recommendations.

DCK - 12/3/76

375

FORM SSA-1569 (10-74)

33

458a

Defendants' Exhibit No. 6

NAME OF FACILITY: Sioux Court Nursing Center 39-5337 040357

Specialized Rehabilitative Services

EXPLANATORY STATEMENTS

	YES	NO	N/A
F249			
F250 →			
F251	X		
F252	X		
F253	X		

☒ MET ☐ NOT MET

11. Specialized rehabilitative services. (405.1126) — In addition to rehabilitative nursing (405.1124(e)), the skilled nursing facility provides, or arranges for, under written agreement, specialized rehabilitative services by qualified personnel (i.e., physical therapy, speech pathology and audiology, and occupational therapy) as needed by patients to improve and maintain functioning. These services are provided upon the written order of the patient's attending physician. Safe and adequate space and equipment are available, commensurate with the services offered. If the facility does not offer such services directly, it does not admit nor retain patients in need of this care unless provision is made for such services under arrangement with qualified outside resources under which the facility assumes professional responsibilities for the services rendered. (See 405.1121(i).)

☒ MET ☐ NOT MET

(a) Standard: Organization and staffing.

Specialized rehabilitative services are provided, in accordance with accepted professional practices, by qualified therapists or by qualified assistants or other supportive personnel under the supervision of qualified therapists.

Other rehabilitative services also may be provided, but must be in a facility where all rehabilitative services are provided through an organized rehabilitative service under the supervision of a physician qualified in physical medicine who determines the goals and limitations of these services and assigns duties appropriate to the training and experience of those providing such services.

Written administrative and patient care policies and procedures are developed for rehabilitative services by appropriate therapists and representatives of the medical, administrative, and nursing staffs.

List Rehabilitative Services:

TYPE OF SERVICE	PROVIDED BY FACILITY	OUTSIDE RESOURCE
Physical Therapy	X	
Speech Therapy		X

376

FORM SSA-1569 (10-74)

34

Defendants' Exhibit No. 6

459a

NAME OF FACILITY: Penn Court Nursing Center 34-5337 0400357

Specialized Rehabilitative Services (Continued)

	YES	NO	N/A		EXPLANATORY STATEMENTS
F254				☒ MET ☐ NOT MET	
F255	X			Rehabilitative services are provided under a written plan of care, initiated by the attending physician and developed in consultation with appropriate therapist(s) and the nursing service.	
F256	X			Therapy is provided only upon written orders of the attending physician.	
F257	X			A report of the patient's progress is communicated to the attending physician within 2 weeks of the initiation of specialized rehabilitative services.	
F258	X			The patient's progress is thereafter reviewed regularly, and the plan of rehabilitative care is reevaluated as necessary, but at least every 30 days, by the physician and the therapist.	
F259				☒ MET ☐ NOT MET	
				(c) Standard: Documentation of services.	
				The physicians' orders, the plan of rehabilitative care, services rendered, evaluations of progress, and other pertinent information are recorded in the patient's medical record, and are dated and signed by the physician ordering the service and the person who provided the service.	
F260				☒ MET ☐ NOT MET	
				(d) Standard: Qualifying to provide outpatient physical therapy services.	
				If the facility provides outpatient physical therapy services, it meets the applicable health and safety regulations pertaining to such services as are included in Subpart Q of this part. (See 405.1719; 405.1720; 405.1722(a) and (b) (1), (2), (3) (i), (4), (5), (6), (7), and (8); and 405.1725.)	
				Facility provides:	
F261				Outpatient physical therapy (1) ☐ YES (2) ☒ NO	
F262				Speech therapy (1) ☐ YES (2) ☒ NO	

377

FORM SSA-1569 (10-74)

35

460a

Defendants' Exhibit No. 6

NAME OF FACILITY: Penn Court Nursing Center 34-5337 0400357

Pharmaceutical Services

	YES	NO	N/A		EXPLANATORY STATEMENTS
F263				☐ MET ☒ NOT MET	
				VIII. Pharmaceutical services. (405.1127) — The skilled nursing facility provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals. Whether drugs and biologicals are obtained from community or institutional pharmacists or stocked by the facility, the facility is responsible for providing such drugs and biologicals for its patients, insofar as they are covered under the programs, and for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate Federal, State, and local laws. (See 405.1124 (g), (h), and (i).)	
F264				☐ MET ☒ NOT MET	
				(a) Standard: Supervision of services.	
F265	X			The pharmaceutical services are under the general supervision of a qualified pharmacist	
F266	X			The pharmacist is responsible to the administrative staff for developing, coordinating, and supervising all pharmaceutical services.	
F267		X		The pharmacist (if not a full-time employee) devotes a sufficient number of hours, based upon the needs of the facility, during regularly scheduled visits to carry out these responsibilities.	
F268		X		The pharmacist reviews the drug regimen of each patient at least monthly, and reports any irregularities to the medical director and administrator.	
F269	X			The pharmacist submits a written report at least quarterly to the pharmaceutical services committee on the status of the facility's pharmaceutical service and staff performance.	
				NAME OF PHARMACIST: William Franklin A. Hess RP 020264	
F270				(1) ☐ FULL TIME (2) ☒ PART TIME	
F271				IF PART TIME, HOURS PER MONTH SPENT IN FACILITY: 8	

F263, 264
F267 Cross reference F183, 186

F268 Cross reference F183

S. D. Hess Drugs
Pharmacy Permit # 412170
DEA # AH 0480974

378

FORM SSA-1569 (10-74)

36

461a

Defendants' Exhibit No. 6

NAME OF FACILITY: Ibex Court Nursing Center 34-5337 040357

	YES	NO	N/A
F272			
F273	X		
F274	X		
F275		X	
F276	X		
F277		X	

☐ MET ☒ NOT MET

(b) Standard: Control and accountability.

The pharmaceutical service has procedures for control and accountability of all drugs and biologicals throughout the facility.

Only approved drugs and biologicals are used in the facility.

They are dispensed in compliance with Federal and State laws.

Records of receipt and disposition of all controlled drugs are maintained in sufficient detail to enable an accurate reconciliation.

The pharmacist determines that drug records are in order and that an account of all controlled drugs is maintained and reconciled.

NAME AND POSITION OF PERSON RESPONSIBLE FOR CONTROLLED DRUG RECORD: Mrs B. Stamer L.N./D.O.N

F278 ☐ MET ☒ NOT MET

(c) Standard: Labeling of drugs and biologicals.

The labeling of drugs and biologicals is based on currently accepted professional principles and includes the appropriate accessory and cautionary instructions as well as the expiration date when applicable.

F279 ☐ MET ☒ NOT MET

(d) Standard: Pharmaceutical services committee.

F280	X		
F281	X		
F282		X	
F283	X		

A pharmaceutical services committee (or its equivalent) develops written policies and procedures for safe and effective drug therapy, distribution, control and use.

The committee is comprised of at least the pharmacist, the director of nursing services, the administrator, and one physician.

The committee oversees pharmaceutical service in the facility, makes recommendations for improvement, and monitors the service to ensure its accuracy and adequacy.

The committee meets at least quarterly and documents its activities, findings and recommendations.

Pharmaceutical Services (Continued)

EXPLANATORY STATEMENTS

272 275 F278 The following medication were improperly labeled:
a) Maalox was ordered qid - did not have label on
b) Lanolin was labeled T 40's/day - order was 2 mg T.i.d
c) Lasix was ordered 2 orang. juice - not noted on label
d) Inderal - ordered Tab i.t.d & the PAC label stated only P.R.N.
e) Calamine lotion - only qty named
f) 2 tubes of zinc oxide - no label

F279 Cross reference F 181, 182, 183, 184, 187, 193, 203

F282 A nurse was observed administering medications without the medication cardex

FORM SSA-1569 (10-74)

379

37

NAME OF FACILITY: Ibex Court Nursing Center 34-5337 040357

Membership of pharmaceutical services committee:

NAME	POSITION
Dr. B. Chase, D.O.	Medical Director
Franklin Ware, R.P.	Consultant Pharmacist
Dr. Steingart, M.D.	
Dr. A. Faiuli, M.D.	
Dr. M. Cohen, M.D.	
Mr. Donald Lucas, Administrator	

FREQUENCY OF MEETINGS: (MONTHLY, QUARTERLY, ETC.)

F284 1. ☐ WEEKLY 2. ☐ MONTHLY 3. ☒ QUARTERLY

DATE OF LAST MEETING:

F285 12/15/76

Pharmaceutical Services (Continued)

EXPLANATORY STATEMENTS

Mrs. B. Stamer, D.O.N.
Mrs. B.A. Shemfelt, V.P.
Mrs. C. Cassidy, R.N.

FORM SSA-1569 (10-74)

380

38

NAME OF FACILITY: Saint Janet Nursing Center 39-5337 0460357

Laboratory and Radiological Services

	YES	NO	N/A
F286 →			
F287 →			
F288			X
F289	X		
F290		X	
F291		X	
F292	X		
F293		X	

381

☒ MET ☐ NOT MET

IX. **Laboratory and radiologic services (405.1128)** — The skilled nursing facility has provision for promptly obtaining required laboratory, X-ray, and other diagnostic services.

☒ MET ☐ NOT MET

(a) Standard: Provision for services.

If the facility provides its own laboratory and X-ray services, these meet the applicable conditions established for certification of hospitals that are contained in 405.1028 and 405.1029, respectively.

If the facility itself does not provide such services, arrangements are made for obtaining these services from a physician's office, a participating hospital or skilled nursing facility, or a portable X-ray supplier or independent laboratory which is approved to provide these services under the program.

All such services are provided only on the orders of the attending physician.

The attending physician is notified promptly of the findings.

The facility assists the patient, if necessary, in arranging for transportation to and from the source of service.

Signed and dated reports of a clinical laboratory, X-ray, and other diagnostic services are filed with the patient's medical record.

EXPLANATORY STATEMENTS

F290 Physicians ordered tests were not available for 24 hr urinalysis, X-Ray and per laboratory protocol test

F291 Documentation of Physicians being informed of abnormal laboratory and/or X-Ray findings was not available on the medical record

F293 Serum X-Ray or laboratory tests were ordered by the physician with no report available

F290, 291, 293 Cross reference F 346 "f"

FORM SSA-1569 (10-74)

39

NAME OF FACILITY: [illegible] Nursing Center 39-5337 0460357

Laboratory and Radiological Services (Continued)

	YES	NO	N/A
F294 →			
F295 →			

382

If outside resource used, list name and provider number:

LABORATORY: Dana Labs
PROVIDER NO.: 39-8109

X-RAY: Professional Health Services
PROVIDER NO.: 39-9800

EXPLANATORY STATEMENTS

FORM SSA-1569 (10-74)

40

NAME OF FACILITY: Texas Court Nursing Center 39-5337 0400357

	YES	NO	N/A
F300			

☒ MET ☐ NOT MET

X. **Dental services (405.1129)** — The skilled nursing facility has satisfactory arrangements to assist patients to obtain routine and emergency dental care (See 405.1121(i).) (The basic Hospital Insurance Program does not cover the services of a dentist in a skilled nursing facility in connection with the care, treatment, filling, removal, or replacement of teeth or structures supporting the teeth; and only certain oral surgery is included in the Supplemental Medical Insurance Program.)

F301			X
F302		X	
F303	X		

☐ MET ☒ NOT MET

(a) Standard: Advisory dentist.

An advisory dentist participates in the staff development program for nursing and other appropriate personnel (see 405.1121(h)).

The advisory dentist recommends oral hygiene policies and practices for the care of patients.

NAME OF ADVISORY DENTIST

Maier Berkowitz, DDS

F304	X		
F305	X		
F306	X		
F307	X		

☒ MET ☐ NOT MET

(b) Standard: Arrangements for outside services.

The facility has a cooperative agreement with a dental service.

Maintains a list of dentists in the community for patients who do not have a private dentist.

The facility assists the patient, if necessary, in arranging for transportation to and from the dentist's office.

Dental Services

EXPLANATORY STATEMENTS

F301, 302
Documentation of the advisory dentist participating in staff development was not available

Jefferson Dental Clinic for dentures

FORM SSA-1569 (10-74)

42

383

Defendants' Exhibit No. 6

466a

NAME OF FACILITY: Texas Court Nursing Center 39-5337 0400357

	YES	NO	N/A
F296			

☒ MET ☐ NOT MET

(b) Standard: Blood and blood products.

F297			X
F298			X
F299			X

Blood handling and storage facilities are safe, adequate, and properly supervised.

If the facility provides for maintaining and transfusing blood and blood products, it meets the conditions established for certification of hospitals that are contained in 405.1028(j).

If the facility does not provide its own facilities but does provide transfusion services alone, it meets at least the requirements of 405.1028(j) (1), (3), (4), (6), and (9).

IF OUTSIDE RESOURCE USED, LIST NAME.

Physician's Reference

Laboratory and Radiological Services (Continued)

EXPLANATORY STATEMENTS

FORM SSA-1569 (10-74)

41

384

Defendants' Exhibit No. 6

467a

NAME OF FACILITY: Penn Court Nursing Center 34-5337 04CC357

Social Services

EXPLANATORY STATEMENTS

	YES	NO	N/A
F308 →			

☒ MET ☐ NOT MET

XI. Social services (405.1130) — The skilled nursing facility has satisfactory arrangements for identifying the medically related social and emotional needs of the patient. It is not mandatory that the skilled nursing facility itself provide social services in order to participate in the program. If the facility does not provide social services, it has written procedures for referring patients in need of social services to appropriate social agencies. If social services are offered by the facility, they are provided under a clearly defined plan, by qualified persons, to assist each patient to adjust to the social and emotional aspects of the patient's illness, treatment, and stay in the facility.

385

F309 →			
F310	X		
F311		X	
F312	X		
F313	X		

☒ MET ☐ NOT MET

(a) Standard: Social service functions.

The medically related social service and emotional needs of the patient are identified.

Services are provided to meet them, either by qualified staff of the facility, or by referral, based on established procedures, to appropriate social agencies.

If financial assistance is indicated, arrangements are made promptly for referral to an appropriate agency.

The patient and family or responsible person are fully informed of the patient's personal and property rights.

3/3/82

3/3/82 F311 cross reference F316

FORM SSA-1569 (10-74)

43

Defendants' Exhibit No. 6

NAME OF FACILITY: Penn Court Nursing Center 34-5337 04CC357

Social Services (Continued)

EXPLANATORY STATEMENTS

	YES	NO	N/A
F314 →			
F315	X		
F316		X	
F317	X		
F318	X		

☒ MET ☐ NOT MET

(b) Standard: Staffing.

If the facility offers social services, a member of the staff of the facility is designated as responsible for social services.

If the designated person is not a qualified social worker, the facility has a written agreement with a qualified social worker or recognized social agency for consultation and assistance on a regularly scheduled basis. (See 405.1121(i).)

F316 The consultant for F319 social services is not qualified.

The social service also has sufficient supportive personnel to meet patient needs

Facilities are adequate for social service personnel, easily accessible to patients and medical and other staff, and ensure privacy for interviews.

386

NAME OF PERSON RESPONSIBLE FOR SOCIAL SERVICES: Mrs Debra Goldstein

If not qualified social worker, qualified consultant or social agency provides assistance

F319 → (1) ☐ YES (2) ☒ NO

IF SOCIAL AGENCY USED, GIVE NAME:

F320 →			
F321	X		
F322		X	
F323	X		

☒ MET ☐ NOT MET

(c) Standard: Records and confidentiality of social data.

Records of pertinent social data about personal and family problems medically related to the patient's illness and care, and of action taken to meet the patient's needs, are maintained in the patient's medical record.

If social services are provided by an outside resource, a record is maintained of each referral to such resource.

Policies and procedures are established for ensuring the confidentiality of all patients' social information.

FORM SSA-1569 (10-74)

44

Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 99-5337 0400357

	YES	NO	N/A
F324			
F325			
F326	X		
F327			X
F328			
F329			
F330			
F331			X
F332	X		
F333	X		
F334	X		

XII. Patient activities (405.1131) — The skilled nursing facility provides for an activities program, appropriate to the needs and interests of each patient, to encourage self care, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning.

F325 — X MET ☐ NOT MET

(a) Standard: Responsibility for patient activities.

A member of the facility's staff is designated as responsible for the patient activities program.

If not a qualified patient activities coordinator, this staff member functions with frequent, regularly scheduled consultation from a person so qualified. (See 405.1121(i).)

NAME OF PATIENT ACTIVITIES COORDINATOR: Joyce Parker

If not qualified, consultation is provided

F328 — (1) X YES (2) ☐ NO

NAME OF CONSULTANT: n a

F329 — Frequency of consultation n a hours per month

F330 — ☐ MET X NOT MET

(b) Standard: Patient activities program.

Provision is made for an ongoing program of meaningful activities appropriate to the needs and interests of patients, designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice, if any.

Each patient's activities program is approved by the patient's attending physician as not in conflict with the treatment plan.

The activities are designed to promote the physical, social and mental well-being of the patients.

The facility makes available adequate space and a variety of supplies and equipment to satisfy the individual interests of patients (see 405.1134(g)).

Patient Activities

EXPLANATORY STATEMENTS

B.I. from temple - in Lerveation with emphesis on therapeutics

F330 F331 the activities program is not meeting the needs of all the patients as evidenced by the fact that patients were observed setting idly in lounge areas and bedrooms on all floors

FORM SSA-1569 (13-74)

45

387

470a Defendants' Exhibit No. 6

NAME OF FACILITY: Town Court Nursing Center 99-5337 0400357

	YES	NO	N/A
F335			
F336			
F337	X		
F338	X		
F339	X		
F340			
F341			
F342			
F343			

XIII. Medical records (405.1132) — The facility maintains clinical (medical) records on all patients in accordance with accepted professional standards and practices. The medical record service has sufficient staff, facilities, and equipment to provide medical records that are completely and accurately documented, readily accessible, and systematically organized to facilitate retrieving and compiling information.

F335 — ☐ MET X NOT MET

F336 — X MET ☐ NOT MET

(a) Standard: Staffing.

Overall supervisory responsibility for the medical record service is assigned to a full-time employee of the facility.

The facility also employs sufficient supportive personnel competent to carry out the functions of the medical record service.

If the medical record supervisor is not a qualified medical record practitioner, this person functions with consultation from a person so qualified. (See 405.1121(i).)

NAME AND TITLE OF FULL TIME PERSON RESPONSIBLE FOR MEDICAL RECORDS: Patti Hayes - Secretary

If not qualified, consultation is provided

F340 — (1) X YES (2) ☐ NO

F341 — Frequency of consultation unable to determine. hours per month

NAME AND TITLE OF CONSULTANT: Lucille Weslein

F342 — (1) X ART 3974 (2) ☐ RRA

F343 — X MET ☐ NOT MET

(b) Standard: Protection of medical record information.

The facility safeguards medical record information against loss, destruction, or unauthorized use.

Medical Records

EXPLANATORY STATEMENTS

FORM SSA-1569 (10-72)

46

388

Defendants' Exhibit No. 6 471a

NAME OF FACILITY: [illegible] Court Nursing Center 39-5337 6400357

	YES	NO	N/A	
F344				☐ MET ☒ NOT MET

(c) Standard: Content.

The medical record contains sufficient information to identify the patient clearly, to justify the diagnosis and treatment, and to document the results accurately.

All medical records contain the following general categories of data: documented evidence of assessment of the needs of the patient, of establishment of an appropriate plan of treatment, and of the care and services provided; authentication of hospital diagnoses (discharge summary, report from patient's attending physician, or transfer form), identification data and consent forms, medical and nursing history of patient, report of physical examination(s), diagnostic and therapeutic orders, observations and progress notes, reports of treatments and clinical findings, and discharge summary including final diagnosis and prognosis.

F345		X
F346		X
F347	NUMBER OF RECORDS EXAMINED	59
F348	CURRENT INPATIENT	45
F349	DISCHARGED PATIENTS	14
	METHOD OF SELECTION OF CASES FOR EXAMINATION	Medicare, Medicaid, diagnosis, death, discharges, dementia
	LIST TYPE OF DATA WHICH IS LACKING	discharge summaries
	ON HOW MANY RECORDS	14

F350	☐ MET	☒ NOT MET

(d) Standard: Physician documentation.

Only physicians enter or authenticate in medical records opinions that require medical judgment (in accordance with medical staff bylaws, rules, and regulations, if applicable).

All physicians sign their entries into the medical record.

F351	X	
F352		X

FORM SSA-1569 (10-74)

389

Medical Records (Continued)

EXPLANATORY STATEMENTS

F335
F344
F345
F346 A review of forty-five (45) ex-patient medical records revealed the following
(1) Substantial (17) records contained inadequate or incomplete assessment of pt's needs by the physician and/or nursing.
(2) forty-five (45) records lacked interdisciplinary assessment of patients for discharge planning
(2) forty-five (45) records lacked pt plans of care which reflect the current status of the pt and/or progress toward stated goals
(2) Consent forms on 4 records were not signed by the patient or guardian
(2) 2 records lacked nursing histories
(6) Monthly nursing summaries were lacking as follows:
1) 28 records lacked summaries by 7-3 nsg personnel
2) 12 records lacked summaries by 3-11 shift personnel
3) 11 records lacked summaries by 11-7 shift personnel
(8) eighteen (18) records lacked one or more of the following categories of information
1) diagnostic and/or therapeutic orders
2) observations and/or progress notes
3) reports of treatments and/or clinical findings

F352 F350 cross reference F193

NAME OF FACILITY: [illegible] Court Nursing Center 39-5337 6400357

	YES	NO	N/A	
F353				☐ MET ☒ NOT MET

(e) Standard: Completion of records and centralization of reports.

Current medical records and those of discharged patients are completed promptly.

All clinical information pertaining to a patient's stay is centralized in the patient's medical record.

F354	✓	
F355	X	
F356	☒ MET	☐ NOT MET

(f) Standard: Retention and preservation.

Medical records are retained for a period of time not less than that determined by the respective State statute, the statute of limitations in the State, or 7 years from the date of discharge in the absence of a State statute, or, in the case of a minor, 3 years after the patient becomes of age under State law.

F357	☒ MET	☐ NOT MET

(g) Standard: Indexes.

Patients' medical records are indexed according to name of patient and final diagnoses to facilitate acquisition of statistical medical information and retrieval of records for research or administrative action.

F358	☒ MET	☐ NOT MET

(h) Standard: Location and facilities.

The facility maintains adequate facilities and equipment, conveniently located, to provide efficient processing of medical records (reviewing, indexing, filing, and prompt retrieval).

FORM SSA-1569 (11-74)

48

390

Medical Records (Continued)

EXPLANATORY STATEMENTS

F353, 354, 355
Fourteen out of fourteen closed medical records reviewed lacked discharge summaries by the physician
Cross reference F346

NAME OF FACILITY: Penn Court Nursing Center 39-5337 0460357

	YES	NO	N/A	
				Any skilled nursing facility which does not have such agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1864 is in effect (or, in the case of a State in which no such agency has an agreement under 1864, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (a)(2) of this section, shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to ensuring skilled nursing facility services for persons in the community who are eligible for payments with respect to such services under the programs.
391				NAME OF HOSPITAL: St. Agnes Hospital
F365 →				HOSPITAL PROVIDER NO.: 39-0194

Transfer Agreement (Continued)

EXPLANATORY STATEMENTS

FORM SSA-1569 (10-74)

50

NAME OF FACILITY: Penn Court Nursing Center 39-5337 0460357

	YES	NO	N/A	
F367 →				X MET ☐ NOT MET
F368				*(b) Standard: Emergency power.*
	X			The facility provides an emergency source of electrical power necessary to protect the health and safety of patients in the event the normal electrical supply is interrupted.
F369				The emergency electrical power system must supply power adequate at least for lighting in all means of egress; equipment to maintain fire detection, alarm, and extinguishing systems; and life safety support systems.
	X			Where life support systems are used, emergency electrical service is provided by an emergency generator located on the premises.
F370				
	X			
F371 →				X MET ☐ NOT MET
				(c) Standard: Facilities for physically handicapped.
F372				
	X			The facility is accessible to, and functional for, patients, personnel, and the public.
F373				
392				All necessary accommodations are made to meet the needs of persons with semiambulatory disabilities, sight and hearing disabilities, disabilities of coordination, as well as other disabilities, in accordance with the American National Standards Institute (ANSI) Standard No. A117.1, American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped.
	X			
				The Secretary (or in the case of a facility participating as a skilled nursing facility under XIX only, the survey agency — see 249.33(a)(1)(i) of this title) may waive in existing buildings, for such periods as deemed appropriate, specific provisions of ANSI Standard No. A117.1 which, if rigidly enforced, would result in unreasonable hardship upon the facility, but only if such waiver will not adversely affect the health and safety of patients.
F374				
	X			4.1 Are the facility grounds graded to the same level as the primary entrance so that the building is accessible to the physically handicapped?

Physical Environment (Continued)

EXPLANATORY STATEMENTS

FORM SSA-1569 (10-74)

52

Defendants' Exhibit No. 6

NAME OF FACILITY: Glen Court Nursing Center 39-5337 0460357

	YES	NO	N/A	
F359				X MET ☐ NOT MET

XIV. Transfer agreement (405.1133) — The skilled nursing facility has in effect a transfer agreement with one or more hospitals approved for participation under the programs, which provides the basis for effective working arrangements under which inpatient hospital care or other hospital services are available promptly to the facility's patients when needed. (A facility that has been unable to establish a transfer agreement with the hospital(s) in the community or service area after documented attempts to do so is considered to have such an agreement in effect.)

F360				X MET ☐ NOT MET
F361	X			
F362	X			
F363	✓			
F364	X			

(a) Standard: Patient transfer.

A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that:

1) Transfer of patients will be effected between the hospital and the skilled nursing facility, ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician, and

2) There will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions, and

3) Security and accountability for patients' personal effects are provided on transfer.

393

Transfer Agreement

EXPLANATORY STATEMENTS

FORM SSA-1569 (10-74)

49

Defendants' Exhibit No. 6

NAME OF FACILITY: Glen Court Nursing Center 39-5337 0460357

	YES	NO	N/A	
F365				☐ MET X NOT MET

XV. Physical environment (405.1134) — The skilled nursing facility is constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public.

(a) Standard: Life safety from fire.

The skilled nursing facility meets such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to nursing homes; except that, in consideration of a recommendation by the State survey agency, the Secretary may waive for such periods as deemed appropriate specific provisions of such Code which, if rigidly applied would result in unreasonable hardship upon a skilled nursing facility, but only if such waiver will not adversely affect the health and safety of the patients; and except that the provisions of such Code shall not apply in any State if the Secretary finds, in accordance with applicable provisions of section 1861(j)(13) of the Social Security Act, that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in skilled nursing facilities. Where waiver permits the participation of an existing facility of two or more stories which is not of at least 2-hour fire resistive construction, blind, nonambulatory, or physically handicapped patients are not housed above the street level floor unless the facility is of 1-hour protected noncombustible construction (as defined in National Fire Protection Association Standard No. 220), fully sprinklered 1-hour protected ordinary construction, or fully sprinklered 1-hour protected wood-frame construction. Nonflammable medical gas systems, such as oxygen and nitrous oxide, installed in the facility comply with applicable provisions of National Fire Protection Association Standard No. 56B (Standard for the Use of Inhalation Therapy) 1968 and National Fire Protection Association Standard No. 56F (Nonflammable Medical Gas Systems) 1970.

394

Physical Environment

EXPLANATORY STATEMENTS

F365 Patients were observed unattended, in patient lounges with no provisions for summoning assistance

FORM SSA-1569 (10-74)

51

NAME OF FACILITY: Town Court Nursing Center 39-5337 040357

	YES	NO	N/A
F375	X		
F376		X	
F377		X	
F378	X		
F379		X	
F380		X	
F381	Y		
F382	X		
F383	X		
F384	X		
F385	X		
F386		X	
F387	X		

4.2 Is the width and grade of walks used by patients and public, designed so that they can be utilized by the handicapped?

4.3 If the facility has a parking lot, is properly designated parking space available near the building, allowing room for the physically handicapped to get in and out of an automobile onto a surface suitable for wheeling and walking?

5.1 Are ramps designed so that they can be negotiated by individuals in wheelchairs?

5.2 Is there a primary entrance usable by persons in wheelchairs? (LSC-SRF 3-5)

5.3 Are doors used by patients and public of sufficient width and so equipped and of a weight to permit persons in wheelchairs to open them with a single effort? (LSC-SRF 4-2)

5.4.1 Are stairs that may be used by the physically handicapped of a height and design that allows such individuals to negotiate them without assistance?

5.4.3 Are these stairs equipped with handrails, at least one of which extends past the top and bottom steps?

5.5 Are floors non-slip and on a common level or connected by a negotiable ramp on each story?

5.6 Is there an appropriate number of toilet rooms accessible to and usable by the handicapped?

5.7 Is there an appropriate number of water fountains accessible to and usable by the handicapped?

5.8 Is there an appropriate number of public telephones accessible to and usable by the handicapped?

5.9 If a multi-story building, are elevators accessible to and usable by the handicapped, at entrance level and all levels normally used by the public? (LSC-SRF 7-4)

5.10 Are switches and controls of frequent or essential use within reach of wheelchair users?

Physical Environment (Continued)

EXPLANATORY STATEMENTS

395

FORM SSA-1569 (10-74)

53

NAME OF FACILITY: Town Court Nursing Center 39-5337 040357

	YES	NO	N/A
F388		X	
F389	X		
F390	X		
F391	→	X	
F392	→	X	
F393	→	X MET	☐ NOT MET
F394	X		
F395	X		
F396	→	☐ MET	X NOT MET
F397	X		
F398	X		

5.11 Does the facility provide appropriate means for the blind to identify rooms, facilities, and hazardous areas?

5.12 Does the facility provide simultaneous audible and visual warning signals? (LSC-SRF 6-1)

5.13 Does the facility exercise safeguards to eliminate hazards for the handicapped?

Are patient closets accessible to and usable by the physically handicapped? 1. X YES 2. ☐ NO

Are patient beds of a height that permits an individual in a wheel chair to get in and out of bed unassisted? 1. X YES 2. ☐ NO

(d) Standard: Nursing unit.

Each nursing unit has at least the following basic service areas: Nurses station, storage and preparation area(s) for drugs and biologicals, and utility and storage rooms that are adequate in size, conveniently located, and well lighted to facilitate staff functioning.

The nurses station is equipped to register patients' calls through a communication system from patient areas, including patient rooms and toilet and bathing facilities.

(e) Standard: Patient rooms and toilet facilities.

Patient rooms are designed and equipped for adequate nursing care and the comfort and privacy of patients.

They have no more than four beds, except in facilities primarily for the care of the mentally ill and/or retarded where there shall be no more than 12 beds per room. (An institution primarily engaged in the care of the mentally retarded or in the treatment of mental diseases cannot qualify as a participating skilled nursing facility under Medicare.)

Physical Environment (Continued)

EXPLANATORY STATEMENTS

F388 The facility does not provide a means for the blind to identify hazardous areas

F389 The facility does not provide simultaneous audible and visual warning signals.

F396, 397 Four (5) patients were observed in bed with the patient Call bell out of reach

Patient observed sitting in chairs did not have call bells within reach

Primary nursing in general patient rooms on the 2nd and 3rd floor were too short to insure primary in treatment and/or care of the patients

Cx 36, F75

396

FORM SSA-1569 (10-74)

54

Defendants' Exhibit No. 6

NAME OF FACILITY: Pine Crest Nursing Center 39-5337 0460357

	YES	NO	N/A
F399			
F400	X		
F401	X		
F402	X		
F403	X		
F404	X		
F405	X		
F406	X		
F407	X		
F408	X		
F409	X		
F410	X		
F411	SEATING CAPACITY OF DINING AREA(S) 45		
F412	NUMBER OF PATIENTS NORMALLY EATING IN DINING ROOM 20		

Single patients rooms measure at least 100 square feet.

Multipatient rooms provide a minimum of 80 square feet per bed.

The Secretary (or in the case of a facility participating as a skilled nursing facility under title XIX only, the survey agency — see 249.33(a)(1)(i) of this title) may permit variations in individual cases where the facility demonstrates in writing that such variations are in accordance with the particular needs of the patients and will not adversely affect their health and safety.

Each room is equipped with, or is conveniently located near, adequate toilet and bathing facilities.

Each room has direct access to a corridor and outside exposure, with the floor at or above grade level.

F403 → X MET ☐ NOT MET

(f) Standard: Facilities for special care.

Provision is made for isolating patients as necessary in single rooms ventilated to the outside, with private toilet and handwashing facilities.

Procedures in aseptic and isolation techniques are established in writing and followed by all personnel.

Such areas are identified by appropriate precautionary signs.

F407 → X MET ☐ NOT MET

(g) Standard: Dining and patient activities rooms.

The facility provides one or more clean, orderly, and appropriately furnished rooms of adequate size designated for patient dining and for patient activities.

These areas are well-lighted and well-ventilated.

If a multipurpose room is used for dining and patient activities, there is sufficient space to accommodate all activities and prevent their interference with each other.

Physical Environment (Continued)

EXPLANATORY STATEMENTS

Isolation Room - 359, 459, 559

Defendants' Exhibit No. 6

NAME OF FACILITY: Pine Crest Nursing Center 39-5337 0460357

	YES	NO	N/A
F413	X		
F414	X		
F415	X		
F416		X	
F417	X		
F418	X		
F419	X		
F420		X	
F421	X		
F422	X		
F423	X		
F424	X		
F425	X		
F426	X		
F427	X		

F413 → X MET ☐ NOT MET

(h) Standard: Kitchen and dietetic service areas.

The facility has kitchen and dietetic service areas adequate to meet food service needs.

These areas are properly ventilated, and arranged and equipped for sanitary refrigeration, storage, preparation, and serving of food as well as for dish and utensil cleaning and refuse storage and removal.

F416 → ☐ MET X NOT MET

(i) Standard: Maintenance of equipment, building, and grounds.

The facility establishes a written preventive maintenance program to ensure that equipment is operative

The interior and exterior of the building are clean and orderly.

All essential mechanical, electrical, and patient care equipment is maintained in safe operating condition.

F420 → ☐ MET X NOT MET

(j) Standard: Other environmental considerations.

The facility provides a functional, sanitary, and comfortable environment for patients, personnel, and the public.

Provision is made for adequate and comfortable lighting levels in all areas.

There is limitation of sounds at comfort levels.

A comfortable room temperature is maintained

There are procedures to ensure water to all essential areas in the event of lost of normal water supply.

Adequate ventilation through windows or mechanical means or a combination of both.

Corridors are equipped with firmly secured handrails on each side.

Physical Environment (Continued)

EXPLANATORY STATEMENTS

1) N16, 418, N19
The following were in need of repair:
a) plasterboard approx. 4sq. inches missing from the bed in Rm 511
b) cement wall cracking away from the beam in the food storage area
c) the paper was coming off the wall outside Rm 511
d) safe bars were not provided for the toilet in Rm 511 bathroom
e) Rm 412 - no assist bars near toilet the metal door on the closet was bent and had sharp edges protruding
f) Rm 452 - the dresser drawer was missing a pull on the bottom 3/28/81
(cont'd on pg 56A)

F420, 421 There were no thermometers available in the nursing units to check proper temperature of hot water
There was a strong odor of urine in the south wing of the second floor and room 206 on the second floor
The following unacceptable conditions were observed:
a) the floor in Rm 508 was sticky and encrusted with food particles
b) Rm 511 - bedpan was stored under the bedside cabinet and a heavy odor was observed on the floor of the B.R.
c) Rm 309 - curtains stained
d) Rm 417 and 421 had offensive odor
e) Rm 552 - paper towels were not available in the B.R., water pitcher, flowers and vase were soiled

See 56A

Town Court Nursing Center 39-5337 0400357

F416, 418, 419 (Cont'd)

Rm 309 - the dresser drawer had no handles
Rm 313 - radiator cover was broken
Rm 314 - side rail on patients bed was broken, the radiator cap was missing, the radiator cover (in the closet) was coming off, plaster was flaking above the radiator in the closet
Rm 415 - the sink in the bathroom was coming away from the wall
Trash was observed stored in the fire exit staircells (original building) on the fourth and fifth floors
5th floor dining room - burn marks were observed on the floor
Call bells not working in Rm 550, 353
Rm 509 - wall paper is pulling away from the wall
Rm 517 - corner baseboard radiator cover was coming off the marked light was not working
Rm 512 (Tub room) the tiles were broken
Rm 551 - Commode bed was broken
4/21
Rm 509 - bathroom sink was dirty
Rm 517 - bathroom floor was soiled
Rm 402 - bathroom had no paper towels
Rms 450, 451, 452 - bathroom floors were soiled
Rm 412 - Bedpan observed on bed side stand
4th floor employee bathroom - the sink and floor were soiled, stained and cobwebs observed in bath area

a) water fountain (3rd floor) was not working
b) Rm 318 Bedroom tiles were broken
c) 554 (Tub room) - knob was off call bell leaving a sharp edge exposed
d) Rm 517 - the cord to the marked light cannot be reached by the patient

Cross reference F41, 45

399

56A

Infection Control

Physical Environment (Continued)

EXPLANATORY STATEMENTS

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

Infection Control

EXPLANATORY STATEMENTS

	YES	NO	N/A	
F429				MET ☒ NOT MET ☐

XVI. Infection control (405.1135) — The skilled nursing facility establishes an infection control committee of representative professional staff with responsibility for overall infection control in the facility. All necessary housekeeping and maintenance services are provided to maintain a sanitary and comfortable environment and to help prevent the development and transmission of infection.

F429				MET ☐ NOT MET ☒

(a) Standard: Infection control committee.

The infection control committee is composed of members of the medical and nursing staffs, administration, and the dietetic, pharmacy, housekeeping, maintenance, and other services.

F430				
F431	X			
F432		X		
		X		

The committee establishes policies and procedures for investigating, controlling, and preventing infections in the facility.

Monitors staff performance to ensure that the policies and procedures are executed.

(a) Members of infection control committee.

NAME	POSITION
Dr. B Chase D.O.	Supervising - Medical Director
Dr. Sangani, M.D.	Staff Physician
Dr. Waltman, M.D.	

F433				FREQUENCY OF MEETINGS: (1) ☐ WEEKLY (2) ☐ MONTHLY (3) ☒ QUARTERLY
F434				DATE OF LAST MEETING: 12/15/76
F435				MET ☐ NOT MET ☒

(b) Standard: Aseptic and isolation techniques.

F436		X		
F437	X			

Written effective procedures in aseptic and isolation techniques are followed by all personnel.

Procedures are reviewed and revised annually for effectiveness and improvement.

Dr. H Faludi, M.D.
Dr. M Cohen, M.D.
Mr Wm. Fagan, Food Service Supervisor
Mrs. Lou Siegel, M.S.N.
Mr. Donald Lewis, Administrator
Miss B Carew, R.N. D.O.N.
Mrs Y. Carew, R.N. Staff Nurse
Mrs. BG. Skemplett, V.P.
Mrs C Cassidy, R.N.
Mr. T. Zedrow, Maintenance - Housekeeping
Mrs. M. White, Laundress
Mr. Weiss, Pharmacist

F429, 431, 432 = F435, 436 - A disposable douche set was observed stored in the bedside cabinet in Rm 401 "cw pg 57A"

XRF97, 99

400

FORM SSA-1569 (10-74)

57

NAME OF FACILITY: Town Court Nursing Center 39-5331 0400357

Infection Control

A tip to the foley catheter drainage bag was observed stored, uncovered, in the B.R. on the floor beside the bed.

401

157A

NAME OF FACILITY: Town Court Nursing Center 39-5337 0400357

	YES	NO	N/A	
F438				X MET ☐ NOT MET
F439	X			
F440	X			
F441	X			
F442	X			
F443			✓	
F444				☐ MET X NOT MET
F445	X			
F446		X		
F447				X MET ☐ NOT MET

(c) *Standard: Housekeeping.*

The facility employs sufficient housekeeping personnel

Provides all necessary equipment to maintain a safe, clean, and orderly interior.

A full-time employee is designated responsible for the services and for supervision and training of personnel.

Nursing personnel are not assigned housekeeping duties.

If a facility has a contract with an outside resource for housekeeping services the facility and/or outside resource meets the requirements of the standard.

NAME OF HOUSEKEEPING SUPERVISOR: Mr. T. Zadroga

(d) *Standard: Linen.*

The facility has available at all times a quantity of linen essential for proper care and comfort of patients.

Linens are handled, stored, processed, and transported in such a manner as to prevent the spread of infection.

(e) *Standard: Pest control.*

The facility is maintained free from insects and rodents through operation of a pest control program.

Humphrey's 2x2/month

FORM SSA-1569 (10-74) 58

402

Infection Control (Continued)

EXPLANATORY STATEMENTS

F429, 431, 432 Procedures for the handling of clean and soiled linen are not being followed as indicated by:

a) The laundress was observed carrying clean linen in a mesh bag, over her shoulder.

b) Clean(3) soiled bags of laundry were observed on the floor of the laundry room.

c) Clean linen in a mesh bag, was observed on the floor in Room 511.

d) Clean linen was observed on a chair.

e) Clean and soiled linen were stored together in the Soiled Utility room.

f) Clean linen storage was observed on the ground floor.

g) The laundress does not perform housekeeping duties.

h) The soiled linen bags were stored in the same area as the clean linen.

Laurel Court Nursing Center 39-5337 0400357

X MET ☐ NOT MET

	YES	NO	N/A
F448			
F449			
F450		X	
F451		X	
F452		X	
F453		X	
F454		X	
F455		X	
F456			
F457			
F458		X	
F459			

XVII. Disaster preparedness (405.1136) — The skilled nursing facility has a written plan, periodically rehearsed, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (patients and personnel) arising from such disasters.

X MET ☐ NOT MET

(a) Standard: Disaster plan.

The facility has an acceptable written plan in operation, with procedures to be followed in the event of fire, explosion, or other disaster.

The plan is developed and maintained with the assistance of qualified fire, safety, and other appropriate experts.

Includes procedures for prompt transfer of casualties and records.

Instructions regarding the location and use of alarm systems and signals and of fire-fighting equipment.

Information regarding methods of containing fire

Procedures for notification or appropriate persons.

Specifications of evacuation routes and procedures. (See 405.1134(a).)

☐ MET X NOT MET

(b) Standard: Staff training and drills.

All employees are trained, as part of their employment orientation, in all aspects of preparedness for any disaster.

The disaster program includes orientation and ongoing training and drills for all personnel in all procedures so that each employee promptly and correctly carries out a specific role in case of a disaster. (See 405.1121(h).)

403

Disaster Preparedness

EXPLANATORY STATEMENTS

F457, 459 A fire drill conducted by the survey team revealed the following:

a) 5th floor - only 1 aide was on the floor unit patients were left unattended in the day room with the door closed - no one assumed a charge position no one was responsible for taking the proper records

b) 4th floor - the personnel continued to clean - No attempt to secure records Rm 404 - door was blocked open Stretcher unattended in lounge, Rm 409 and 413 The doors to Rm 459, 453, 455, 451, 450 were left open

c) 3rd and 2nd floors - no attempt to secure records

Supervised fire drill - 3-24-76

Fire Safety Training Program - 1/12/77

	1st	2nd
7-3	1/12/77	1/10/77
3-11	2/12/77	11/29/76
11-7	12/15/76	9/30/76

FORM SSA-1569 (10-74)

59

Laurel Court Nursing Center 39-5337 0400357

X MET ☐ NOT MET

	YES	NO	N/A
F460			
F461			
F462		X	
F463		X	

XVIII. Utilization review (405.1137) — The skilled nursing facility carries out utilization review of the services provided in the facility at least to inpatients who are entitled to benefits under the program(s). Utilization review has as its overall objectives both the maintenance of high quality patient care and assurance of appropriate and efficient utilization of facility services. There are two elements to utilization review: medical care evaluation studies that identify and examine patterns of care provided in the facility and review of extended duration cases which is concerned with efficiency, appropriateness, and cost effectiveness of care. If the Secretary determines that the utilization review procedures established pursuant to title XIX are superior in their effectiveness to the procedures required under this section, the Secretary may, to the extent that the Secretary deems it appropriate, require for purposes of this title that the procedures established pursuant to title XIX be utilized instead of the procedures required by this section.

X MET ☐ NOT MET

(a) Standard: Written plan of utilization review activity.

The facility has a written, currently applicable utilization review plan, approved by the governing body and the medical director or organized medical staff (if applicable),

which includes at least the following: (1) procedures for medical care evaluation studies, and for dissemination and follow-up of study findings and committee recommendations; (2) definition of the period(s) of extended duration and procedures for review of individual cases of extended duration; (3) a method for identifying patients other than by name (e.g., medical record number); and (4) provisions for maintaining written records of committee activities.

404

Utilization Review

EXPLANATORY STATEMENTS

Fiscal Intermediary -
Blue Cross of Greater Philadelphia
1333 Chestnut Street
Philadelphia Pa.

U & L plan approved by single state agency -

FORM SSA-1569 (10-74)

60

Four Count Nursing Center 31-5337 c46357

Utilization Review (Continued)

EXPLANATORY STATEMENTS

F465 Two physicians who are F467 not professionally involved in the case being reviewed are not always present at U R committee meeting.

405

X MET ☐ NOT MET

(a) Standard: Composition and organization of utilization review committee.

The committee or group responsible for utilization review is composed of two or more physicians and optionally, other professional personnel.

All medical determinations are made by the physician members of the committee.

No physicians review any case in which they were professionally involved.

COMMITTEE IS (1) ☐ IN-HOUSE (2) ☐ LOCAL MEDICAL SOCIETY (3) X OTHER (SPECIFY): Staff physicians

INDICATE THE PROFESSIONAL DISCIPLINES REPRESENTED ON THE UTILIZATION REVIEW COMMITTEE AND GIVE NUMBER OF EACH:

PHYSICIANS	2
NURSES	1
ADMINISTRATORS	1
MEDICAL RECORD ADMINISTRATOR	0
SOCIAL WORKER	1 (not M.S.W)
OTHER (SPECIFY)	2

X MET ☐ NOT MET

(c) Standard: Medical care evaluation studies.

Medical care evaluation studies are performed to promote the most effective and appropriate use of available health facilities and services consistent with patient needs and professionally recognized standards of health care.

Studies which could include assessment of findings resulting from periodic medical review, emphasize identification and analysis of patterns of patient care and changes indicated to maintain consistent high quality of services.

FORM SSA-1569 (10-71)

61

Four Count Nursing Center 31-5337 c46357

Utilization Review (Continued)

EXPLANATORY STATEMENTS

406

Each medical care evaluation study (whether medical or administrative in emphasis) identifies and analyzes factors related to the patient care rendered in the facility, and serves as the basis for recommendations for change beneficial to patients, staff, the facility, and the community.

Studies, on a sample or other basis, include but need not be limited to, admissions, durations of stay, and professional services (including drugs and biologicals) furnished.

At least one study is in progress at any given time.

ARE STUDIES MADE? (1) X YES (2) ☐ NO

IS A STUDY NOW IN PROGRESS? (1) X YES (2) ☐ NO

IF YES, TYPE OF STUDY: evaluation of the care and treatment of decubits

IF NO, GIVE EXAMPLE OF LAST STUDY DONE

X MET ☐ NOT MET

(d) Standard: Review of cases of extended duration.

Periodic review is made of each current inpatient skilled nursing facility beneficiary case of continuous extended duration, the length of which is defined in the utilization review plan, to determine whether further inpatient stay is necessary.

Reviews may also be applied to patients not covered by the program, and/or to cases where duration of stay has not yet reached the definition(s) of extended duration.

FORM SSA-1569 (10-71)

62

Defendants' Exhibit No. 6

NAME OF FACILITY: Glen Court Nursing Center 39-5237 040357

	YES	NO	N/A	
F486		X		The plan may specify a different number of days for different diagnostic classes of cases, or may use the same number of days for all cases. In any event, the period(s) specified bears a reasonable relationship to current average length-of-stay statistics, and does not exceed 30 days from admission.
F487			X	An exception to this 30-day limit may be made where the specific diagnostic classes of cases have average lengths of stay exceeding 30 days, in which instances the plan specifies the extended duration period for each specific diagnostic class.
F488	X			In cases for which advance approval of payment has been made, the period(s) of extended duration may be defined as that period for which payment has been approved.
F489		X		After the initial review, reviews for medical necessity for further inpatient stay are made at least every 30 days for the first 90 days and at least every 90 days thereafter.
F490		X		A review is made and a final determination regarding the patients' further care is reached no later than 7 days following the time period specified as the period of extended duration in the utilization review plan.

407

The utilization review plan specifies the number of continuous days of inpatient stay following which a review is made to determine whether further inpatient services are medically necessary. The plan may specify a different number of days for different classes of cases.

F491 DEFINITION OF EXTENDED DURATION:
1. ___ VARIES BY DIAGNOSIS OR CHARACTERISTIC
2. X A SINGLE NUMBER OF DAYS FOR ALL DIAGNOSES.

F492 INDICATE NUMBER OF DAYS 38

F493 WHAT MECHANISMS ASSURE TIMELY REVIEW OF EXTENDED DURATION CASES? (WITHIN 7 DAYS OF STIPULATED DATES)
1 ___ DELEGATE PHYSICIAN (3) X OTHER (SPECIFY) all cases reviewed
2 ___ CASES MAILED

F494 GIVE NUMBER OF EXTENDED DURATION CASES REVIEWED IN PRIOR CALENDAR MONTH MC-7 MIA-38

Utilization Review (Continued)

EXPLANATORY STATEMENTS

FORM SSA-1569 10-74

63

Defendants' Exhibit No. 6

NAME OF FACILITY: Glen Court Nursing Center 39-5337 040357

	YES	NO	N/A	
F495				X MET ☐ NOT MET *(e) Standard: Admission or further stay not medically necessary.*
F496	X			Final determination regarding the necessity for admission or for further stay, including stay beyond the period of extended duration, is limited to physician members of the committee and may be made by the full physician complement, a subcommittee, or a single committee physician.
F497	X			When a single committee physician has decided that admission is not medically necessary or is inappropriate, or that further stay is no longer medically necessary, further concurrence is obtained as specified in the plan (to include at least a second committee physician) within the 7-day period.
F498	X			If committee members determine, from an extended duration review or a medical care evaluation study, that further stay is not medically necessary, the attending physician is consulted or given the opportunity for consultation, and
F499	X			notification is made in writing within 48 hours by the committee to the administration, the attending physician, and the patient or the patient's representative.
F500				X MET ☐ NOT MET *(f) Standard: Administrative responsibilities.*
F501	X			The administrative staff of the facility is kept directly and fully informed of committee activities to facilitate support and assistance.
F502	X			The administrator studies and acts upon recommendations made by the committee, coordinating such functions with appropriate staff members.

408

Utilization Review (Continued)

EXPLANATORY STATEMENTS

FORM SSA-1569 (10-74)

64

NAME OF FACILITY: Court Nursing Center 34-5337 04EC357

Utilization Review (Continued)

	YES	NO	N/A	BRIEFLY DESCRIBE METHODS OF ADMINISTRATIVE SUPPORT:	EXPLANATORY STATEMENTS
				Administrator serves on the U.R. Committee Secretarial assistance	
				List below the recommendations made by the URC as a result of medical care evaluation studies, analysis of facility practices, etc., since the last survey. Indicate for each one listed the action taken by the facility: The last study made on falls Recommendation - The staff will send record pt. medication & the incident/accident form when a pt falls.	
F503				Does facility's administration make available to the committee information on discharge planning or on other resources for patient care? (1) [X] YES (2) [ ] NO DESCRIBE: through social services and discharge planning procedure	
				Briefly describe mechanism used by administrator to assure transfer of information required for continuity of patient care: 3 part transfer form	
F504				IS TRANSFER OF INFORMATION TIMELY? (1) [ ] YES (2) [X] NO	F504, 505 cross reference with F346
F505				IS CONTENT OF INFORMATION ADEQUATE FOR CONTINUING CARE? (1) [ ] YES (2) [X] NO	

409

FORM SSA-1569 (10-74) 65

NAME OF FACILITY: Court Nursing Center 34-5337 04EC357

Utilization Review (Continued)

	YES	NO	N/A		EXPLANATORY STATEMENTS
F506				[X] MET [ ] NOT MET *(g) Standard: Utilization review records.*	
F507	X			Written records of committee activities are maintained.	
F508	X			Appropriate reports, signed by the committee chairman, are made regularly to the medical staff, administrative staff, governing body, and sponsors (if any).	
F509	X			Minutes of each committee meeting are maintained and include at least: (1) Name of committee, (2) Date and duration of meeting, (3) Names of committee members present and absent, (4) Description of activities presently in progress to satisfy the requirements for medical care evaluation studies, including the subject and reason for study, dates of commencement and expected completion, summary of studies completed since the last meeting, conclusions, and followup on implementation of recommendations made from previous studies, and (5) Summary of extended duration cases reviewed, including the number of cases, case identification number, admission and review dates, and decisions reached, including the basis for each determination and action taken for each case not approved for extended care.	

410

FORM SSA-1569 (10-74) 66

Nursing Center 3-5337 Doc 357

Utilization Review (Continued)

EXPLANATORY STATEMENTS

THE COMMITTEE RECORDS INCLUDE:

F310 → X LIST OF PATIENT CASES REVIEWED

F311 → X DECISIONS ON PATIENT CASES REVIEWED

F312 → X ADMINISTRATIVE ACTIONS RECOMMENDED BY THE COMMITTEE

HOW OFTEN ARE MEETINGS OF THE FULL UR COMMITTEE HELD, AS VERIFIED BY THE SURVEYOR?

F313 → (1) ☐ WEEKLY (2) X MONTHLY (3) ☐ QUARTERLY

INTERNAL RECORDS OR METHODS WHICH ARE USED BY THE UR COMMITTEE FOR REVIEW OF EXTENDED DURATION CASES AND MEDICAL CARE EVALUATION STUDIES INCLUDE:
(CHECK ALL APPROPRIATE BOXES FOR EACH TYPE OF CASE)

METHOD OR RECORD	CASES: EXTENDED DURATION (1)	MCE STUDY (2)	BOTH (3)
F314 → COMPLETE MEDICAL RECORD	X		
F315 → ABSTRACT OF MEDICAL RECORD			
F316 → FACE SHEET OF MEDICAL RECORD			
F317 → UTILIZATION REVIEW CHECK-LIST			
F318 → INTERVIEW WITH ATTENDING PHYSICIAN			
(3) → OBSERVATION OF PATIENT		X	
F319 → OTHER (SPECIFY)			

411

FORM SSA-1569 (5-74)

67

Nursing Center 3-5337 Doc 357

Utilization Review (Continued)

EXPLANATORY STATEMENTS

F 521, 522 Cross reference
F 335, 344, 345, 346

MET X NOT MET

F515 →

(iv) Standard. Discharge planning.

The facility maintains a centralized, coordinated program to ensure that each patient has a planned program of continuing care which meets his postdischarge needs.

1) The facility has in operation an organized discharge planning program.

The utilization review committee, in its evaluation of the current status of each extended duration case, has available to it the results of such discharge planning and information on alternative available community resources to which the patient may be referred.

F524 → X

2) The administrator delegates responsibility for discharge planning, in writing, to one or more members of the facility's staff, with consultation, if necessary, or arranges for this service to be provided by a health, social, or welfare agency.

F525 → X

3) The facility maintains written discharge planning procedures which describe (i) how the discharge coordinator will function, and his authority and relationships with the facility's staff; (ii) the time period in which each patient's need for discharge planning is determined (preferably within 7 days after the day of admission); (iii) the maximum time period after which a reevaluation of each patient's discharge plan is made; (iv) local resources available to the facility, the patient, and the attending physician to assist in developing and implementing individual discharge plans; and (v) provisions for periodic review and reevaluation of the facility's discharge planning program.

F526 → X

4) At the time of discharge, the facility provides those responsible for the patient's postdischarge care with an appropriate summary of information about the discharged patient to ensure the optimal continuity of care. The discharge summary includes at least current information relative to diagnoses, rehabilitation potential, a summary of the course of prior treatment, physician orders for the immediate care of the patient, and pertinent social information.

412

FORM SSA-1569 (5-74)

68

XX.

TRANSCRIPT OF HEARING OF SEPT. 15, 1977

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(106) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2474

TOWN COURT NURSING CENTER, INC., et al.

v.

FRANK S. BEAL, etc., et al.,

Defendants

Philadelphia, Pennsylvania
September 15, 1977

Before HON. JOHN P. FULLAM, J.

Appearances

For Rothschild, O'Brien and Frankel by Nathan L. Posner, Esq., Jeffrey B. Albert, Esq. for Plaintiff Town Court Nursing Center, Inc.

(107) Abrahams & Loewenstein by William F. Coyle, Esq., for Additional Plaintiffs

Margaret Hathaway, Esq., Assistant Attorney General for Secretary of the United States, Department of Health, Education and Welfare, Defendant

Robert S. Forster, Jr., Esq., Assistant United States Attorney, for the Government

Maria Parisi Vickers, Esq., Assistant Attorney General for the Commonwealth of Pennsylvania

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(Commenced at 10:15 o'clock a.m.)

THE COURT: Town Court Nursing Center and others v. Joseph Califano and others.

(Pause.)

THE COURT: If anyone has anything to say, let him now speak or hereafter let him hold his peace.

MR. POSNER: Your Honor, I arise because possibly—I don't know whether it is smart to keep quiet.

We are here before Your Honor because an Order that Your Honor placed at the last hearing in which you gave us temporary injunctive relief pending what I call the redetermination of the situation by the federal authorities. "Reconsideration" is the word that is used.

(108) I now find that within three or four days thereafter without any further inspection, without any other information despite the assurances that I had in this courtroom, all of—not of record—they affirmed their decision.

I come back to this Court and say under the law there was an administrative hearing that we are still entitled to.

THE COURT: I think the question in my mind is: What is the next step in the administrative process?

MR. POSNER: The next step in the administrative process is for the eventual appointment for an administrative law judge, if you will, to hear this case on its merits. And until that time I would like to have the protection of this Court.

THE COURT: What is the probable timing thereof?

MR. POSNER: I can't answer that. I imagine the Government would have to answer that much better than I can.

THE COURT: You can answer by saying you don't know. I take it you don't know.

MR. POSNER: That is correct. Then that is my answer to Your Honor.

But I am looking for—

THE COURT: Let's find out.

MR. POSNER: Sure.

MS. HATHAWAY: Your Honor, I believe it would take anywhere from four to six months for the scheduling and holding of an administrative hearing in the case.

(109) THE COURT: And what is the position of the Government as to what should [be] happening in the interim?

MS. HATHAWAY: Well, Your Honor, our position remains the same. We are very concerned about the welfare of the patients at Town Court, and we are

not at all assured that the conditions there are such the patients should merely be allowed to remain there during the pendency of the administrative hearing.

THE COURT: I will note for the record on the basis of the record presented at the previous hearing I am entirely satisfied that the patients are being adequately cared for.

I suspect that the real basis for the administrative action may have to do with matters which are not before this Court or any other court that I know of as yet. That has to do with the rumors about the possible financial difficulty; that is to say, allegations of improper certification and fraudulent action in connection with the Medicare program.

Obviously what I am about to say has nothing whatever to do with any action which may appropriately be taken if such charges are justified.

But certainly on the basis of this record the alleged violations are extremely technical, and even the ones which were not technical, assuming they had merit, were relatively minor and in my judgment not a cause for any alarm at all.

The problem, as I see it, is the regulations are being administered in a very inflexible fashion. The Government relies (110) upon the certification of compliance or non-compliance by the state inspectors. The state inspectors who made the inspection apparently did so without any awareness of what the consequences of their finding would be.

Therefore, in finding what would at most be a technical violation, if it was a violation in the absence

of written regulations, on things which were being done improperly they enabled the Government to trigger this business about if you had been in violation before and found in violation again an automatic termination. It seems to me that the welfare of the patients under these circumstances in the absence of available, suitable alternatives is such that we simply can't turn them loose.

I will also note that the Government's decision was rendered without any hearing and that the so-called reconsideration does not appear to have amounted to much in the reconsideration. In the event a hearing was held, no additional information was sought and no additional inspections were made.

For those reasons, I will enter an Order continuing the preliminary injunction pending the outcome of the administrative proceedings.

I would point out that the timing of the duration of the injunction is almost entirely within the control of the respondents. I find it difficult to understand why that should take six months, but if it does, it is their fault and not anybody (111) else's.

All right, that is all.

I will enter an Order continuing the preliminary injunction pending completion of the administrative review process by the HEW.

MR. FORSTER: Your Honor, may the Government address the Court?

THE COURT: Yes, of course.

MR. FORSTER: Your Honor, I am here instead of Mr. DeLuca, who is Government counsel of record,

and I have with me Ms. Hathaway who appeared before Your Honor in chambers in a conference before and in the hearing that was held previously.

I was not here at that hearing and, therefore, Your Honor, I don't know of my own knowledge the record as it existed at the conclusion of that hearing.

We believe, however, that the Town Court situation may be different than Your Honor understands it to be at this point. And to that end we have with us here this morning a public health officer from the United States Public Health Service who is personally familiar with the conditions under which—

THE COURT: You have evidence you want to present?

MR. FORSTER: Perhaps so, Your Honor.

THE COURT: You are the litigator, I am not. If you want to present evidence, I will be glad to hear it.

MR. FORSTER: We would like to present the testimony (112) of that person.

In addition, we have the Assistant District Attorney from the County and City of Philadelphia who will testify if the Court cares or perhaps—

THE COURT: Bear in mind I am not the one who decides how you litigate; you are the one. Do what you want to do.

MR. FORSTER: The difficulty—all right, sir, we will.

Thank you.

THE COURT: Proceed.

To the extent I said I will enter an Order, I obviously will withdraw those comments and have made no disposition of this motion.

You may proceed now to present evidence.

MS. HATHAWAY: Your Honor, I call Claudette Campbell.

CLAUDETTE V. CAMPBELL, sworn.

THE COURT: B or V?

THE WITNESS: V as in Victor.

THE COURT: Thank you.

Direct Examination

BY MS. HATHAWAY:

Q. Ms. Campbell, will you state for the record your title, please.

A. My title is Regional Officer's Consultant for the Office— (113) it is for Long-Term Care, Health, Education and Welfare.

Q. Could you summarize very quickly for the Court your qualifications.

A. My qualifications are as follows: I am a registered nurse, a professional registered nurse for a period to date of 15 years; I have a Bachelor of Science degree in nursing and a Master of Public Health degree.

Q. Would you describe your role in the Bureau of Health Standards and Quality Review of the Town Court Nursing home.

A. Yes. My role with respect to review of the Town Court Nursing Home in any adverse actions that

are submitted to our regional office they require the input of a health professional. The file is completed for review by staff, and I am responsible for the file review to make a recommendation for concurrence or non-concurrence of the adverse action that has been recommended.

The review consists of a consideration of all documentation submitted; and paramount to that review, I must ensure that standards have been applied and that the recommendations have been substantiated.

Moreover, the review must look at the outcome with respect to the findings; that is, how it relates to the health and safety of patients.

Another important program in part of this review and very critical is the history or the responsible nature of a provider to maintain the standards as it relates to health and safety (114) of patients.

Q. How did you become familiar with Town Court?

A. My initial familiarity with Town Court Nursing Center began in 1974 with the recommendation of termination action, and I was involved with the final reviews of that situation.

More recently as a result of a complaint that was issued from the District Attorney's office of this County of Philadelphia, the economic crime unit submitted to our regional office a request to investigate a complaint of poor patient care in July of 1976.

THE COURT: Hold it a minute. The economic crime rate?

THE WITNESS: No, crime unit.

THE COURT: Crime unit.

THE WITNESS: Pardon me if I wasn't clear.

THE COURT: All right.

BY MS. HATHAWAY:

Q. Have you ever been to the facility?

A. Yes, I have.

Q. When?

A. Initially in 1976, July 19 through the 23rd, based on a request to investigate a complaint of poor patient care.

Q. You have submitted to the Court an affidavit which summarizes the history. Could you describe the nature—

THE COURT: Excuse me, but when did she do that?

(115) MS. HATHAWAY: I am sorry, Your Honor, it was attached to the brief in opposition to plaintiffs' Motion.

THE COURT: Well, that doesn't make it part of the record. Obviously you can't ask it that way. You can ask if everything in there is true and correct and then offer it as her testimony.

BY MS. HATHAWAY:

Q. Ms. Campbell, I show you a document entitled "Affidavit of Claudette V. Campbell," which is signed and dated September 14, 1977.

Did you prepare that affidavit?

A. Yes, I did.

Q. Can you attest to the accuracy of the statements therein?

A. I can attest to the accuracy of the statements.

THE COURT: And do you?

THE WITNESS: Yes, I do, sir.

THE COURT: O.K.

MS. HATHAWAY: Mark that for me.

(A five-page document entitled "Affidavit of Claudette V. Campbell" dated September 14, 1977, was marked Defendants' Exhibit 7 for identification.)

BY MS. HATHAWAY:

Q. Can you summarize for us the nature of the compliance of Town Court as you saw in your review of the file?

MR. POSNER: I will object to that, sir.

(116) THE COURT: Objection overruled.

THE WITNESS: In summary, I reviewed the file.

With respect to my recommendation for nonrenewal of the current agreement with the Federal Government—

BY MS. HATHAWAY:

Q. Yes?

A. —the summarization as outlined by my review showed a substantiation of the findings that critical conditions of participation were not met. These were medical direction, physician service, nursing services, pharmaceutical services, and medical records.

In looking at the standards that support the condition—a condition is the major health unit of a facility or health system—they ensure through meeting acceptable professional standards that the patient will receive care and services in a safe and adequate manner.

A condition that outlined medical direction was not met having to do with lack of coordination of medical services. It is [to] ensure that physicians are there to supervise their patients.

It is true that we set out specific standards, but these standards are basic professional practices of medical care.

One such standard has to do with when you write orders for your patient they have to be based on a medical evaluation. You look at the patient. You assess the various organs, heart, liver, etc., their bone structure. As you do that, then a (117) recommendation and orders are written and progress notes regarding the status of the patient.

There were omissions in meeting the required time frames. These are of importance to the nursing staff, and the health care providers, so that patients do receive services in an accurate and prompt manner. There cannot be gaps, and we have set time frames and it is based on acceptable medical practices.

Moreover, under physician services there is a requirement that the progress review is on a timely basis, and there is specificity for it. There is a reason. You cannot have the time gaps for that level of patient without having the overview of the physician, and there were omissions in that area.

In some instances physical examinations were not done within the appropriate time frame. The physical examinations tell the physician what is going on so

that he can develop a program that is to be carried out by the staff.

BY THE COURT:

Q. When was all this done?

A. This was a result of the materials submitted as it relates to the current non-renewal of this provider agreement.

Q. I don't understand. I asked you a question. I haven't gotten an answer yet.

A. Do you mean when this was actually observed, the events took place?

(118) Q. When were these omissions and gaps in the time frames observed?

A. Oh, these were observed by the state surveyors during their survey on March 8 through the 11th, 1977.

Q. So you are relying on that report?

A. Yes.

Q. Thank you.

A. May I explain further?

Q. Of course.

A. I think it is important to briefly state that the way we ascertain compliances with our conditions is through an annual survey. Surveys are conducted and findings are recorded and determinations are then made with respect to compliance.

We base decisions on the events and observe answers at that point in time.

BY MS. HATHAWAY:

Q. Were there any other surveys that you reviewed in coming to your decision?

A. The survey that was previous to that was conducted November 22 through the 23rd, 1976, and the

subsequent followup activities in December. And previous to that the federal survey was conducted January 19 through the 23rd of '76.

Q. Were there any changes in the crucial conditions of participation across that time period?

A. There were no significant changes in that the same conditions (119) were found to be on the subsequent three surveys not in compliance.

Q. In your opinion does non-compliance with the condition of participation such as nursing services threaten the safety and welfare of the patients?

A. In my opinion that is the critical service. It is the only 24-hour service that we have skilled nursing around the clock. It has to do with carrying out orders such as treatments, medications, insuring environments to prevent accidents, to maintain an environment of dignity for the patients, and to ensure that in line with the treatments they are carried out in an accurate and competent fashion. It is the critical condition of participation.

Q. And has that condition—has the compliance with that condition improved over the past two years?

MR. POSNER: Objected to, sir.

THE COURT: Objection overruled.

BY MS. HATHAWAY:

Q. As reflected in your file.

A. As reflected in my file the condition has been marked "Not met" from 1974 based on various visits through 1977, March of 1977.

THE COURT: Your affidavit says that in April of 1976 there were found to be no discrepancies and no violations.

THE WITNESS: Based on the review of the file—I am sorry, I thought that the question had to do with my—

(120) THE COURT: Has there been any improvement? Certainly if everything was fine in April of 1976 that represents an improvement, does it not?

THE WITNESS: Yes. I understand. I have misinterpreted that question.

BY MS. HATHAWAY:

Q. Can you explain to the Court the status of the facility between October '74, and the survey in April '76?

A. Could you repeat that question, please?

Q. Could you explain to the Court the status of the facility between October 31, 1974, and April 1976, when they were readmitted to the program?

A. From October 1974, the status of the facility was not a participant based on not meeting the conditions: physician services, nursing services, and etc.

Then there was a time period whereby they sought re-entry. In the April 1976 survey that has been referred to showed from the state survey no standards not met. They were in compliance.

I was explaining my remarks based on November—July 1976, through March 1977. But in April there was a survey with no negative findings.

And then in July we were requested to go in on a complaint; and from July—and again I reiterate this is the period I was referring to—from July 1976, through March 1977, (121) these conditions were indeed found to be not met. And it was a repeat finding of the same conditions not met.

Q. Can you explain the relationship between your office and the state survey agency very briefly?

A. Yes. The state agency serves as an agent to the Federal Government to conduct on an annual basis surveys of providers such as a nursing center participating in the Medicare and Medicaid program. They conduct surveys based on health standards and life safety standards to ascertain compliance. These standards impact significantly on health and safety of patients in the facilities.

There are agents to conduct the surveys on a timely basis, to document the findings, and to make a recommendation to our office with respect to continuance or non-continuance in the federal program.

Q. Did the state survey agency based on the latest surveys—the November '76 and March '77 surveys—recommend to you based on those surveys that the facility be certified for a new provider agreement?

(Pause.)

A. The recommendation for no provider agreement came with the survey of March 8 through the 11th, 1977.

Q. The survey agency did recommend non-certification?

MR. POSNER: Objected to. Counsel is suggesting what the answer should be for the witness.

(122) THE COURT: Whatever the witness says isn't going to change it. It is a matter of record. Either there is or there isn't.

Objection overruled.

THE WITNESS: May I repeat, the non-renewal recommendation from the state agency

came based on the survey of March 8 through the 11th, 1977.

BY MS. HATHAWAY:

Q. Do you consider the violations listed in the March 1977 survey report technical violations?

(Pause.)

MR. POSNER: That is an objectionable question, sir. That is a legal determination.

THE COURT: Objection overruled.

THE WITNESS: I am not clear what is meant by—I heard this used today—technical violations. I am in a health discipline; and, of course, when I review them I am looking at them as it relates to—

THE COURT: Well, specifically the alleged violations that there was an absence of a written procedure for cleaning brushes and combs, not any charge that the brushes and combs were not cleaned, but simply there was not a written procedure established.

THE WITNESS: I see.

(123) That type of violation when I review the file based on individuals providing input my major objective is to look for the areas that substantiate not an area such as brushes but areas that would substantiate a critical negative finding as it relates to treatments being rendered.

I am not going to center in on the brushes. I am going to center on treatment. That is my role, to look at and see if there is substantial documentation. You will always get additional documentation from a surveyor. I must look to see as it relates to meeting standards and what is substantial in that discrepancy.

So the brushes weren't considered as a thing to consider for my recommendation for non-renewal. I looked to see if there were omissions in treatments, medications, the accuracy of administration.

There was one individual who was not authorized under requirements to administer medications. There were medications that were not labeled. These are the substantive discrepancies with standards.

Again, to repeat, not a statement such as brushes or whatever that referred to—

BY MS. HATHAWAY:

Q. What was your conclusion upon review of the file?

A. My conclusion upon review of the file was that there was substantial documentation to address the meeting in a safe and (124) accurate manner the health needs of patients based on conditions not met, and my recommendation was in concurrence with the state agency's recommendation that the agreement should not be renewed.

MS. HATHAWAY: Thank you.

Cross-Examination

BY MR. POSNER:

Q. Miss Campbell, you were in court on July 26, 27, 1977, when this case was first heard by Judge Fullam?

A. Yes, sir.

Q. Did you testify at that time?

A. I did not.

Q. You did not testify.

You heard certain so-called "experts" testify concerning the conditions they found on a peer review, did you not?

A. Yes, sir.

Q. Did you go back or ask that someone go back to verify whether or not the statements they had made in this courtroom were of worth or verified a situation and, if it did, as to whether or not that should have controlled a consideration by your department?

A. That is a decision made by a person, an individual, other than myself; but a reconsideration was indeed entered into—

Q. Let me ask you this—

A. —based on the reports of those witnesses.

Q. You haven't answered my question. Let me try to give it to you more plainly.

(125) Having heard the testimony of these experts, did it not prompt you to make a personal visit to the place to see whether or not there had been changes there over what you believed the situation was before?

A. That is not my decision.

Q. Whose decision is that?

A. The decision is made by the director of the agency responsible for the enforcement of federal regulations.

Q. Can you give us the name, please?

A. It is Dr. Gerald Szuc.

Q. Is that the gentleman that testified here that he had been in the office only about a month at the time you recall his testimony?

A. That is the gentleman who was here.

Q. Well, he had only been with the department about a month in this region, had he not?

THE COURT: Well, his testimony on that subject is in the record.

MR. POSNER: It is a matter of record; that is right, sir.

BY MR. POSNER:

Q. Did you discuss the matter with him as to whether or not an investigation was going to be made?

A. Yes.

Q. Was it made?

(126) A. Through the reconsideration.

Q. Wasn't a re-examination of the premises made since that time?

A. A re-examination of the premises was not made.

Q. And the affidavit that you have taken and submitted to the Court here is a recitation of events over a period of time would you say based primarily on the surveys made by the Pennsylvania Department of Health?

A. Partly on the surveys of the Pennsylvania Department of Health and in July of 1976 a direct federal

survey, which is a survey that applies health discipline from a federal agency.

Q. Let me ask you: You relied on that March 11, 1976, investigation, did you not?

A. Yes.

Q. '77 I mean.

A. Yes.

Q. Did you know that there was an investigation made on June 22 by the Pennsylvania Department of Health?

A. No; I am not aware of an investigation in June of '77.

Q. If I told you at the time that the Pennsylvania Department of Health made its investigation they recommended that a three-month provisional license, as recommended in March 1977, be issued; that it be effective from June 24, 1977, to September 24, 1977; and they stated in their recommendation, "This recommendation is based upon progress which has been made since the March 1977 (127) survey and the May 1977 special visit," were you aware of this recommendation?

(Pause.)

A. No. I cannot recall my being made aware of it just since you have read that.

Q. Do you think you should have contacted the State Department of Health before you reached a decision on your reconsideration as to whether they had any additional information since their inspection of March 1977?

A. As I have indicated—

Q. Just answer my question.

A. Would you repeat it?

Q. Did you think it proper after the court hearing in July of 1977 to make inquiry of the state authorities who were present in this very courtroom as to whether or not they had made an inspection as of June 1977, and what their recommendations were?

(Pause.)

A. No, I did not, unless they were based on their own licensure requirements. We are speaking of federal requirements.

Q. Regardless of what requirements they were, you base many of your decisions on surveys made by them and not by your own team; isn't that correct?

A. As it relates to federal requirements.

Q. So you wouldn't disown at this time a recommendation that they made and accepted only the statements they made prior thereto—

(128) THE COURT: Excuse me—

BY MR. POSNER:

Q. —to the detriment that was placed?

A. Sir, the recommendation would not be made to me. It would be made to the agency direct.

THE COURT: Let's get one thing clear on the record. Are you talking about a recommendation that the state license be renewed or a recommendation by the state agency to HEW?

MR. POSNER: No, sir; I am talking about the state license being renewed.

THE COURT: O.K.

MR. POSNER: I thought that information might have been conveyed to the Federal Government.

THE COURT: Apparently it was not.

BY MR. POSNER:

Q. That in the opinion of the authorities the State relied—the Federal Government having been persuaded by them on a prior occasion might want to change their opinion in its reconsideration.

A. That is licensure. Our bases for determinations are on federal standards.

Q. Don't you—

A. That is a state licensure—

THE COURT: We understand that.

BY MR. POSNER:

Q. Don't you agree with me, Miss Campbell, that the State (129) authorities are interested in the welfare and health of a person?

THE COURT: This is just arguing. Go on to something else. We are trying to find out what the facts are, not make argument at this point.

BY MR. POSNER:

Q. Did you meet Mr. Laff, L-a-f-f, in this courtroom who was the state representative at that time in July of 1977? You know him, don't you?

A. Would you rephrase your question? I do not understand the question.

THE COURT: I don't either.

BY MR. POSNER:

Q. Do you know if Mr. Laff was in charge of licensure for the State Department of Health?

A. Do I know him?

Q. Yes, ma'am.

A. I know him.

Q. Did you see him in the courtroom here in July of 1977?

A. Yes.

Q. Did you discuss with him the fact that he had made another inspection as of June 1977?

A. No.

Q. He never told you that?

A. No.

Q. He never told you that?

(130) A. No.

Q. If you had the benefit of that report as I have read it to you, would that give you some thought in order to inquire as to what they had found so that you might determine whether or not conditions—

THE COURT: Mr. Posner, your questions just don't make any sense. They are rambling. You start out with one question and ask three others and throw in additional circumstances which louse up the first question.

So why don't you take a deep breath and start over again and ask one question at a time, please.

MR. POSNER: Thank you, sir.

BY MR. POSNER:

Q. If you had had the results of the investigation conducted in June 1977, of the State Department of Health, would you have considered their findings before you had reached your determination of the reconsideration of this case?

A. My remarks would be in the form of a recommendation to the head of the unit responsible for enforcement. And based on that type of report because it had to do with licensure and that it was a provisional

licensure for three months, that would not have been substantial enough to change my recommendation with respect to the seriousness of the deficiencies at the nursing center.

MR. POSNER: I have no further questions.

Thank you very much.

(131) THE COURT: Anything further of this witness?

Redirect Examination

BY MS. HATHAWAY:

Q. Ms. Campbell, did you review the reports of consultants submitted on reconsideration by Town Court?

A. Yes, I did.

Q. Did you change your opinion based on those reports?

MR. POSNER: Objected to, sir.

THE COURT: Objection overruled.

THE WITNESS: No.

BY MS. HATHAWAY:

Q. Why not?

A. The reports tended to interpret federal regulations. In some instances they were conflicting in their findings and reports did not give assurance or indicate that there was compliance.

There were some reports not referred to, progress is being made; but we are looking for at this time, based on the seriousness of the conditions, for full

compliance and not misinterpretations of our standards.

MS. HATHAWAY: That is all. Thank you.

THE COURT: Anyone else have any questions?

MR. POSNER: I have finished, sir.

MS. HATHAWAY: That is all. Thank you.

THE COURT: You may step down.

(Witness excused.)

(132) MR. FORSTER: If Your Honor, please, we have in addition a copy, of which I am sure counsel for plaintiffs has seen before, which is a presentment by a special investigating Grand Jury presented to the Court of Common Pleas of Philadelphia County, Trial Division, Criminal Section, Miscellaneous No. 76-00-1646.

It is a public record, and I would hope plaintiffs would have no objection to its going into the record.

THE COURT: The way to find out is to offer it and see.

MR. FORSTER: I do offer it into evidence at this time.

MR. POSNER: I will object, of course, sir.

The procedure here at the present time is whether we are entitled to temporary injunctive relief pending administrative determination as to the fitness of this place to be used.

THE COURT: What do you offer the presentment to establish?

MR. FORSTER: Your Honor, I simply intended to establish that the Town Court Nursing Center has been of sufficient concern to more jurisdictions, if you will, than the Federal Court, sufficient that the investigation—

THE COURT: I don't want your argument. I want to know what it shows.

Does it show the Grand Jury was concerned about handling the finances, the Grand Jury was concerned about conditions they inspected and found?

(133) MR. FORSTER: Yes, sir. The Grand Jury heard direct testimony from people who were familiar with the operations at the Center, and they were concerned about patient care. They recommended a presentment—they recommended an information charging the Nursing Home with recklessly endangering the welfare and health of the patients.

THE COURT: As of what date?

MR. FORSTER: This was returned May of this year, sir.

THE COURT: When was the evidence presented?

MR. FORSTER: It was a continuing investigation, Your Honor; and I believe it went back into 1976. It went on for a period of time.

So that the testimony presented to the investigating Grand Jury touched and concerned events which took place at a varying number of times.

MR. POSNER: The witnesses, sir, who are not subjected to cross-examination by us, now my friend

would like to get a presumption of guilt based on that type of evidence even before we have had our actual hearing in court.

A preliminary hearing has not as yet been held, and I submit to Your Honor for that reason this is certainly not proper at this time because the issue before Your Honor is a limited one at this moment, as I see it.

THE COURT: Well—

(134) MR. FORSTER: I appreciate that, Your Honor.

THE COURT: Relax. The objection is overruled. The document will be received for what it is worth. That doesn't necessarily undercut your argument.

(A 26-page document entitled "Fourth Presentment" by the Special Investigating Grand Jury of April Term, 1976, Court of Common Pleas of Philadelphia County, Trial Division, Criminal Section, was marked and received in evidence as Defendants' Exhibit No. 8 for identification.)

THE COURT: May I see it, please?

(Document handed to the Court.)

(Pause.)

THE COURT: Anything further from anybody?

MR. POSNER: Yes, sir. I have testimony when the Government is finished its case.

MR. FORSTER: That is all we have, sir.

MR. POSNER: Mr. Lewis, would you take the stand, please.

Is the oath still in effect?

THE COURT: He has testified previously, and he is still under oath.

MR. POSNER: Mark this.

(A one-page letter from Mr. Laff, Pennsylvania Department of Health, to Mr. Lewis, Administrator, Town Court Nursing Home, dated July 29, 1977, with attached six-page report, was marked (135) Plaintiffs' Exhibit No. 12 for identification.)

DONALD LEWIS, previously sworn.

Direct Examination

BY MR. POSNER:

Q. Mr. Lewis, as of June 22, 1977, was there an inspection made by the Pennsylvania Department of Health of Town Court Nursing Home?

A. Yes, sir, on June 22.

Q. And under date of July 29, did you receive a letter from the Directors of the Division of Long-Term Care with regard to that inspection?

A. Approximately I think.

Q. I show you what has been identified here as Plaintiffs' Exhibit No. 12 (handing to witness).

A. Yes, sir. That is it.

Q. So that the record may be clear, Plaintiffs' Exhibit 12 is a document you received from the Department of Health, Commonwealth of Pennsylvania, and it is dated July 29, 1977?

A. Yes, sir, it is.

Q. And it refers to this review of June 1977?

A. Yes, June 22.

MR. POSNER: Cross-examine.

MS. HATHAWAY: We have nothing, Your Honor.

(136) MR. POSNER: May I offer the Plaintiffs' Exhibit 12 in evidence?

THE COURT: You just did, I believe. At any rate, yes, it will be received.

(Plaintiffs' Exhibit No. 12 received in evidence.)

MR. POSNER: Thank you, sir.

That is all, Mr. Lewis.

(Witness excused.)

WILLIAM J. JONES, previously sworn.

MR. POSNER: Mark this P-13.

(A five-page report from William Jones to Leonard Coyle, undated, marked Plaintiffs' Exhibit No. 13 for identification.)

Direct Examination

BY MR. POSNER:

Q. Mr. Jones, at the time of your former testimony here I neglected to ask you concerning your position in New Jersey and the responsibilities of that position. What is that?

A. I was the Director of the Division of Medical Assistance and Health Services, Medicaid.

Q. On behalf of the Federal Government?

A. State government.

Q. And were you in any way connected with the collection or the making of the standards for the State of New Jersey?

(137) A. Yes, sir, I was. From January 1969, I was pretty much the Medicaid program in New Jersey. As such, I had a responsibility to develop the standards for all health services, including skilled nursing homes, to handle the reimbursement, reset up the entire Medicaid program, including the computerization program integrity, standards, etc.

I can say with some little pride that the Federal Government recognized our program as one of the best in the country.

Q. Now, with all of that background, sir, having already told us about a visit, a peer review of Town Court Nursing Home at the request of Mr. Coyle, did you make another inspection of Town Court Nursing Home and, if you did, when?

A. On August 10, 1977, sir.

Q. Now, what was the purpose of that visit, sir?

A. The purpose of the visit was to follow up on my previous findings and recommendations and to review the federal standards and the state standards to see whether or not the home was in substantial compliance with those standards.

Q. Were you aware at that time, sir, of the findings of the Department of Health insofar as its inspection of June 24—June 22, 1977?

A. Yes, sir; I was given a copy of that report.

Q. And did you summarize all of your findings of this visit, sir, in a document that has been marked Plaintiffs' Exhibit 13, (138) which I will hand to you at this time, sir (handing to witness)?

A. Yes, sir.

Q. And in that document, sir, you have taken into consideration all of the federal regulations and standards, do you not?

A. Yes, I have, sir.

Q. And, sir, I have only one question of you now.

With all of your experience and background in your opinion would the lives or the safety of the patients now confined at Town Court Nursing Home be endangered to any extent whatsoever—

A. Absolutely not, sir.

Q. Let me finish the question.

A. I am sorry.

Q. —by a continuation of their stay there going forward?

A. Absolutely not, sir.

If I may—

Q. Go ahead.

A. —I am quite chagrined to hear interpretations of what the various programs are. Standards for programs are contained in the Bible, the long-term care manual. And if anyone is familiar with this manual, there are standards and there are interpretations and guidelines.

And this manual issued by the Federal Government gives a standard and then says how you should interpret it. So there are interpretations involved here.

I am also a little bit chagrined to see that a program (139) and the Federal Government's intent in the Medicare/Medicaid program wherein inspectors are supposed to be professionals and are supposed to assist the facilities in overcoming deficiencies and are supposed to recommend consultants to the facilities. The

whole philosophy in this book I don't find being followed as far as the survey of this facility is concerned, at least within the last year.

Q. You have already told us, Mr. Jones, concerning the fact that you are aware of the provisional license issued by the State because of the inspection of June 22?

A. Yes, sir.

Q. Will you tell us in what respects or are there any substantial differences between the standards set by the State and Federal Government with regard to issuances of licenses?

A. Well, the Title 18 program, the Title 19 program, and the Licensing within Pennsylvania are within 99.9 percent similar.

So that if a license were given one should assume and could presume that the standards for licensing were met and, therefore, the standards for Medicare and Medicaid were substantially in compliance at that particular time. Otherwise, I wouldn't see any reason for giving a license.

MR. POSNER: Cross-examine.

Cross-examination

BY MS. HATHAWAY:

Q. Mr. Jones, what can you tell us of the conditions at Town (140) Court in March of 1977?

A. In March of 1977?

Q. Yes.

A. I can tell you nothing from personal observation except what the survey report indicated.

Q. Can you tell us if your visit in June 1977, if anyone at Town Court Nursing Home was aware of your visit in June of 1977, before you arrived?

A. I couldn't answer that.

THE COURT: Did they know in advance you were coming?

THE WITNESS: I presume so. I was asked by counsel, Mr. Coyle.

BY MS. HATHAWAY:

Q. Do you think that might have any effect on the operation of the facility?

A. I don't think so. It has been my experience that you can't clean a facility, you know, within 48 hours. You can't do some of the things whether you know somebody's coming or not.

Obviously if you are a good surveyor and a good inspector you have a pretty good idea what has been freshened up and painted over within the days preceding your visit.

If I may, you know, the place was clean; and in my first visit I asked relatives and patients whether or not this was a phenonemon that occurred within the recent past or had the facility been cleaned as it was today and for weeks and months (141) past. And the answer I got was it was clean and it is always this way. So I presume they didn't polish it up for my visit.

Q. Was your visit on August 10 announced or unannounced?

A. As far as I was concerned it was unannounced. I don't know whether or not they knew I was coming.

Q. But the attorneys for Town Court knew you were coming?

A. Certainly. I presume so, yes.

Q. Would you say that the grant by the State of a provisional license is indicative at all if conditions for licensing in the state are met?

A. Number one, when you talk about conditions, I have heard full compliance of all the standards.

The language of the law and the intent, particularly in the Title 18 program, talks about substantial compliance. And as such, it means that on any given day no facility, health facility, in this country is 100-percent in compliance.

Q. I am talking about state licensing.

THE COURT: He is getting to it, I think.

THE WITNESS: So the fact is when the people came in and the report I saw from the state survey team they said: "Yes, we recognize progress and we are recommending a provisional license," which is a technique used.

In most jurisdictions you give a provisional license when you recognize progress and you want to assure that there is continued progress before you give full licensing. That is my (142) experience. On that basis, I would say that the survey team recommended progress.

BY MS. HATHAWAY:

Q. Do you know how long it has been since Town Court has had a regular unconditional license?

A. No, I do not.

MS. HATHAWAY: Thank you.

MR. POSNER: Thank you, sir.

THE COURT: Anyone else?

(No response.)

THE COURT: Thank you, sir.

(Witness excused.)

MR. POSNER: That is my rebuttal.

THE COURT: Any further evidence from anybody?

MS. HATHAWAY: No, sir.

THE COURT: Any further argument from anybody?

MS. HATHAWAY: Yes, sir. We would like to repeat our basic contention which seems buried in the midst of evidence going on this morning, which is that this facility has been in and out of compliance since it first entered the program in 1967; that we have given them innumerable opportunities to comply; that they have not; and that we are here as our last—this is our only method of enforcing the statute and regulations.

There is a definite patient problem. There is a (143) problem about what to do with the patients, but we don't see—

THE COURT: What about due process? At what point do they have an opportunity to contest this?

MS. HATHAWAY: We agree with that issue extensively. We feel that the Supreme Court in Mathews v. Eldridge disposed of that question in stating that a predetermined hearing is not required by due process in a Title 2 case, which we feel is a more sympathetic case than is the case before the Court. In that

case was involved a man's only livelihood. In this case we are talking about a nursing home reimbursement.

But I refer the Court to our brief. I think we discussed both our jurisdictional concerns and our position that due process has been afforded the facility both in the initial determination by the Bureau of Health Standards and Quality and the reconsideration process which was done by the central office of that Bureau and done after invitation and submission by plaintiffs of whatever evidence they chose to offer.

We feel the Supreme Court's exposition of the content of due process in these situations has been met.

THE COURT: What in your view is the purpose of any hearing before an administrative law judge if the cat is out of the bag before he even gets the case?

MS. HATHAWAY: Well, that was the problem in the Matthews v. Eldridge case. It was even more of a problem because a man could have starved to death or at least was forced to go— (144) apply for welfare benefits. And the Supreme Court said that no predetermination hearing was required. They said the internal procedures of administration were sufficient to protect the interests.

THE COURT: Well, they ought to be, that is for sure.

MR. POSNER: That was a disability case my friend refers to which the Supreme Court recognized the disability provisions of it and suggested that the patient wouldn't be harmed because during the interim the patient or complainant would be on relief from the federal authorities and getting sustenance in that fashion and support.

MS. HATHAWAY: Your Honor, but it is the same act, the same procedures, the same bureaucracy administering the program.

THE COURT: I certainly hope not.

Anything further?

MR. POSNER: I have nothing further, sir.

FULLAM, J.:

I may state that the primary purpose of the Court in this proceeding is apparently not capable of being realized.

Let me comment upon the evidence which has been presented both at the previous hearing and today. I am absolutely convinced that nobody in the administrative end of HEW who is involved in this case so far as a party here has the faintest idea of what they are doing.

I am persuaded that somebody got all upset with very (145) good justification about complaints of conditions which existed back in 1975, at the latest, or early in 1976, and about financial irregularities. It is absolutely clear to me that anybody in his right mind would conclude that the patients at Town Court Nursing Home are better off there than they would be anywhere else in the foreseeable future.

I am also satisfied that the evidence which has been presented this morning by the first witness sounded more like a memorized recitation than testimony about facts. It was full sweeping conclusions and gobbledygook, which makes no sense. The ultimate conclusion was simply the alleged reconsideration of this case was

a conclusion that there was adequate documentation or sufficient documentation to substantiate the issue.

It is obvious to me that the taxpayers would have saved a lot of money if instead of all the time that has been wasted in review of documentation and appearance here in this proceeding and somebody has simply gone over and looked the place over. It is quite apparent to me that people are much more interested in sustaining previously stated positions, in dotting I's and crossing T's, than they are in actually carrying out sensibly the very beneficial program having to do with nursing homes.

Having said all that, I nevertheless reluctantly conclude that in view of the position taken by the Government, a (146) position which I frankly do not understand and never will, there is nothing that the Court can do about it.

If the administrative bureaucrats persist in being blind to facts, if they persist in looking at documents instead of institutions, if they persist in looking at regulations instead of facts and events, there is nothing the Court can do about it.

It is obvious to me that the outcome of the administrative review is a foregone conclusion. But it is equally obvious to me this is a matter in the control within the administrative agency and not within the control of the Court.

Therefore, it seems to me the long and short of it is that the bureaucrats will wind up with having to stew in their own juice.

I have attempted to make it possible for them to review this matter and arrive at a solution which will be

beneficial to the patients involved. That has not borne fruit. It will be up to them to cope with the needs of these patients in some fashion, which I hope will bring them to a realization of the problem.

The Motion for Continuance of the Preliminary Injunction is denied except as follows:

The defendants are restrained from disapproving Medicare and Medicaid payments to those patients who are in the Home now and otherwise entitled thereto, so long as they remain patients in the home.

(147) The effect of this will be that the plaintiff, Town Court Nursing Home, is not to be required to maintain patients without their being entitled to Medicare payments for those patients who are there.

If the powers that be in the bureaucracy wish to move the patients out, that is their privilege. They are going to pay for them while they are there, and it will be up to them to arrange alternative locations for them.

All of this is denied and the preliminary injunction, of course, is without prejudice to a reconsideration of the matter by the appropriate officials if there can be anyone prevailed upon to have enough enlightenment to look at the current situation and make a current judgment and not look at papers and make a bureaucratic judgment based upon what is on paper and what may have existed in the past.

This hearing is concluded.

(Concluded at 11:22 a.m.)

PLAINTIFFS' EXHIBIT NO. 12

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

P.O. Box 90
Harrisburg 17120

Leonard Bachman, M.D.
Secretary of Health

July 29, 1977

Mr. Donald B. Lewis
Administrator

Town Court Nursing Home
1526 Lombard Avenue
Philadelphia, Pennsylvania 19146

Dear Mr. Lewis:

Enclosed is a copy of a visit made to the Town Court Nursing Home on June 22, 1977, as a follow-up to the March 11, 1977, licensure visit. A visit was requested, by me, as a means of monitoring your actions as described in my April 26, 1977, letter to you.

At a meeting in the Health Department Office in Harrisburg, on July 14, 1977, attended by Mr. Veloric and Counsel, a request was made for a copy of this visit. Inasmuch as the only copy available was a working document, it has been retyped and is herewith enclosed.

Recognizing that it may not get to Mr. Veloric and your attorney by Monday, August 1st, in time for the 1:00 p.m. meeting scheduled in the Health Department Office in Harrisburg, I am retaining copies and will distribute them also at that meeting.

I hope this meets with your approval.

Sincerely,
Jay E. Laff, Director
Division of Long Term Care

Enclosure
cc: Mr. Jennings
Miss Stiller
Mrs. Poppert
Mrs. Bell
Mr. Fasig
Facility File

July 26, 1977

Town Court Nursing Center
1526 Lombard Street
Philadelphia, Pennsylvania 19146

Visited and Reported by:
Judith Folan, RN
Constance Garner, RN
Donald Whitko, RN
Claire Richards, RN
Lois Maunz, RD
Field Representatives

A follow up of the March 11, 1977 licensure visit was made to Town Court Nursing Center on June 22, 1977 as requested by Jay E. Laff, Director-Division of Long Term Care. The findings are as follows:

Governing Body and Management

There has been substantial progress made in providing effective overall management. This was evi-

denced by the improvements noted in patient care and related services.

The facility was observed to be clean and well maintained at this time. Attempts have been made to implement policies and procedures previously developed. The frequency of staff development programs has increased and emphasis was placed on areas where deficiencies were previously noted, including patients rights.

Medical Services:

Medical direction appears improved since the time of the March licensure visit. The medical direction consultant committee met on March 23, April 20, and May 27, 1977 chaired by Dr. Barry Chase D.O., Medical Director. All staff physicians are requested to attend these sessions. In those instances where physicians do not attend the meetings written communication via mail. A copy of the State regulations and a list of deficiencies resulting from the March survey were provided to all medical staff members. Emphasis during meetings was placed on both the regulations and physician service deficiencies. The May meeting also resulted in the development of a policy to provide podiatry services on a "p.r.n." basis. Incident and accident reports are also reviewed at each meeting. (a total of thirty-five incidents have occured within the last nine weeks). Conclusions or recommendations resulting from these reviews were not noted.

It is unclear as to whether the improvements noted are due to the efforts of the Medical Director or administrative staff.

Physician services appeared to have improved. Orders and progress notes were available for most patients for the last 3 month period. Long and short term goals, and rehabilitative potential were also listed. A few telephone orders had not been countersigned and occasionally a progress note was not available at the time of a physician's visit, however these deficiencies were primarily observed in the closed records reviewed. The main problem appears to be a lack of substance or appropriateness in the documentation being provided. Goals are very general and progress notes do not always correspond to factual information provided elsewhere in the record. Another problem still appears to be the absence of a date to correspond with the physician signature, this appears to be limited to a few physicians. In general overall improvement in physician services would have to be acknowledged.

Although patients basic needs appeared met and medical records have improved since the previous visit, the appropriateness of the medical care being provided could not be thoroughly assessed.

Dental Services

A new dental consultant has begun evaluations on the patients. This is being accomplished on a priority basis. Documentation was available on the patients medical record to substantiate this.

The agreement with this consultant has not been signed.

Physician orders were not available for the patient to be seen by the dentist.

Nursing Services

Improvements were noted in the appearance of the patients. Patients observed were neat, clean, hair was groomed, men were shaven, nails (finger and toe)

were manicured. Mouth care for the patients was being provided. Personal equipment (powder, combs, brushes, toothbrushes, toothpaste, deodorant) were available. All but a few patients had undergarments. Those not having underwear either did not wish to wear these garments or it was documented on the medical record why undergarments were not being worn.

One patient on the third floor was observed in urine soaked clothing at 10:45 a.m. This patient was in the same soiled clothing at 3:45 p.m.

Five (5) patients were observed without identification bracelets.

Rehabilitative nursing has been initiated for some patients. There are seventy-five (75) patients who are incontinent. Fifty-nine (59) are on an individual training program. There is lack of documentation to support the follow thru and assessment of progress being made. Daily records are kept at the patients bedside. These records are collected and supposedly summarized in the monthly nursing summary, however, there were vague notes on some records and other records lacked any reference to the bowel and bladder training program. Documentation of patients being instructed in activities of daily living was not available.

Baked chicken served to patients was in quarters. Patients with paralysis had difficulty trying to disjoint and eat the chicken. Adaptive equipment (spoons, plates, forks, knives) were not provided for these patients. Assistance for these patients was not provided in a timely fashion.

Rehabilitative exercises were not documented as being performed for stroke patients and/or amputees. Patients with paresis were out of bed were not provided with support to afflicted extremities.

Intake and output records were not maintained on all patients who were on diuretics. One patient was ordered force fluids by the physician. There was incomplete documentation and missing reports of this order being followed. The intake record on Mrs. Ellen Eard indicated the following:

6/15, 6/20—no documentation
6/18, 6/21—documentation recorded for 7-3 shift only
6/17—intake 820cc
6/18—intake 450cc
6/19—intake 740cc

This does not indicate that fluids were being forced as ordered.

The scale which was purchased to weigh non-ambulatory patients was reportedly broken. Routine weights were not available for non-ambulatory patients.

Call bells were available and within reach of patients.

Nursing care plans do not indicate the specific condition of the patients. (i.e. no documentation for adaptive equipment (braces, special shoes). All needs are not identified. Documentation to indicate progress towards reaching goals is not maintained.

The facility currently has a registered nurse supervisor assigned to each floor on the day shift. This is in addition to the charge nurse.

Dietetic Services

A review of dietary services revealed that meals served to patients are attractive and nutritionally adequate to meet the needs of all patients.

Therapeutic diets are served as planned on the menu and as ordered by the physician. A proper identification system is available to ensure that each patient receives diets as ordered.

The storage, preparation and serving areas were clean and in good order. A full time qualified food service supervisor is responsible for the overall dietetic service programs.

The consulting dietitian is present in the facility at least seven (7) hours a week. Through her conscientious efforts and showing of specialized dietary information with the nursing & medical staff she has been able to integrate the dietetic aspects of patient care with the total plan of patient care.

Rehabilitative Services

Rehabilitative services are substantially in compliance. A contract has been established for speech therapy.

Lab/X-Ray Services

Physicians are currently writing orders for laboratory and radiological tests. Test results are being conveyed to the attending physician in a timely fashion. The results of abnormal laboratory studies is being documented by nursing personnel as to the time, date, physician notification and the name of the person doing the notification.

Social Services

A social service consultant has been obtained. Pertinent rates were available on the majority of the records reviewed. One closed record showed lack of follow thru in contacting a close friend (person designated to be contacted on medical record). When the patient had a change in status.

There is a new form which has been instituted for use by Social Service personnel.

Patient Activities

The designated staff member for the patient activities program is qualified in therapeutic recreation and has recently been provided with an additional full-time staff member to aide in the implementation of the designed activity programs. The overall activity program is progressing towards its goal of creating an environment that provides physical, intellectual, social, spiritual and emotional stimulation. This program is newly developed. There is still the need for expansion in order to meet the needs of all the patients.

All documentation by the activities staff is retained in the recreation area. Individual goals and patient assessments were not available on medical records. This does not provide the attending physician as well as the nursing personnel information on the patient's participation in the various activities and significant changes in his/her response to the activities program.

Pharmaceutical Services

The consulting pharmacist spends eight (8) hours per month in the facility to review 198 charts. He initials his monthly review.

It is questionable that the pharmacy provides 24 hours service as evidenced by a patient being admitted at 9:30 a.m. and several medications were ordered from the pharmacy room. Staff interviewed reported that they would have to borrow medications from other patients and the pharmacist would not provide the medicines until the following day at 4:00 p.m. the D.O.N. claimed that this was not true and did secure the medicines that day at 6:00 p.m.

Either nursing personnel are not familiar with the procedure to secure medications or the pharmacy is not providing service on a 24 hour basis.

Transfer Agreements

Transfer agreements were available with seven (7) area hospitals under which inpatient Hospital care is available promptly to the facility's patients when needed. An agreement with the Ivyridge Nursing and Convalescent Home for intermediate care was signed and available for review.

Medical Records

Medical records were reviewed for the past three months (April, May & June). The medical records consultant spends four (4) hours per year in this facility. At the time of the last visit a total of four (4) records were reviewed by this consultant.

Current records reviewed (thirty-five (35)) showed marked improvement although sporadic deficiencies were noted: The amount of documentation has increased considerably however the quality of content is still in need of improvement.

Three (3) closed medical records reviewed lacked an admission progress note on a patient transferred

from the hospital, physician's signatures covering verbal orders, final disposition of medications and personal effects, and notification of family.

The medical records consultant does not provide an adequate number of hours as evidenced by the continuing lack of documentation on the medical records reviewed.

Physical Environment

The facility was neat and clean. The urine odor which was prevalent during the post surveys was not evident.

Cubicle curtains in all patients rooms were not long enough to insure privacy for patients.

The pantry areas on each floor are also being utilized as supervisors offices. The rooms that were formerly day rooms are now dining rooms and vice versa. Written approval for this change was not available.

Infection Control

Flies were observed on the second (2) and fifth (5) floors.

Personal clothing was folded in the laundry and stuffed into plastic bags. This manner of handling patients clothes causes wrinkles and creases. Provisions are not made for ironing patients personal clothing in the clothing which the patients must wear. One (1) employee collects, launders, folds and distributes personal clothing. After delivery to the patients unit (4th floor), clothing was observed being sorted on the counter at the nurses station. This area is used for charting and not designated as laundry sorting/folding area.

Disaster Preparedness

A fire drill was held as requested by the survey team at 11:30 a.m. Substantial improvement was obvious. Response for the most part was immediate and appropriate with all staff, in all departments. Patients were removed to evacuation points; doors and almost all windows were closed; doors to patient rooms were flagged with towels and/or pillow cases to note patients remained within. Each staff member appeared to carry out a specific role under appropriate direction. Charge nurses obtained all patient kardex information placing it on top of medication carts. These were also moved to evacuation points. Patients appeared familiar with their roles many began moving immediately without verbal prompting.

One substantial error was noted involving a visitor. This person was blind and accompanied by a sight dog. During the drill the visitor was ignored and allowed to wonder in patient corridors while all staff hustled and evacuated around this person. The visitor was not informed or given assistance at anytime during the drill.

The facility has recently obtained an agreement with Mr. James Baker, an independent contractor, to provide educational assistance and supervision relating to fire drills and disaster planning.

Recommendation:

It is recommended that a 3 month provisional license, as recommended in March, 1977, be issued. This would be effective from 6/24/77 to 9/24/77.

This recommendation is based upon progress which has been made since the March, 1977 survey and the May, 1977 special visit.

The facility should be monitored on a monthly basis to assure continued efforts towards total compliance and providing quality care. A physician should accompany the survey team in order to evaluate the quality of medical care actually being provided.

PLAINTIFFS' EXHIBIT NO. 13

Mr. Leonard Coyle
332 West State Street
Trenton, New Jersey 08610

Dear Mr. Coyle:

At your request, I again visited the Town Court Nursing Home on August 10, 1977. The purpose of the visit was to evaluate the progress being made at the center to meet the standards and regulations under the Medicare and Medicaid Programs.

In addition, I spent considerable off-site time reviewing the standards and regulations for long term care facilities published by the Office of Medical Programs of the Department of Public Welfare, Commonwealth of Pennsylvania. This document represents the Pennsylvania Title 19 standards.

During my visit I used form SSA 1569 (10-74) Medicare Medicaid Skilled Nursing Facility Survey Report as a basis for my review. Further, I spent considerable time inspecting policy and procedure manuals, reports of meetings and inservice training sessions. Several staff members were interviewed, including the Director of Nursing, the Assistant Director of Nursing, inter alia. Patients were observed and several interviewed.

Findings

1. Compliance with Federal, State and Local Laws (405.1120):

As of August 10, 1977 the Town Court Nursing Center is operating under a provisional license issued by the Pennsylvania authorities. This license expires September 24, 1977 and was issued based on improvements made by the Town Court Nursing Center as noted on June 22, 1977 by the inspection team of the Pennsylvania Department of Health.

2. Governing Body and Management (405.1121):

This facility is in substantial compliance. There are, however, needed improvements as follows:

(A) *Sections F48, 49, 50, 51, 52*—The ongoing educational program is not fully effective. All nursing personnel have not received instruction in patient care techniques such as bowel and bladder control. Physical restoration and restorative nursing techniques are unknown to some staff members.

Not all employees received orientation (F50) as demonstrated by my interview with an attendant newly employed who claims to have received no orientation at all. Nor could I find any documentation of a viable orientation program.

Inservice training in all disciplines needs improvement by cross training one discipline with another.

Recording of sessions must be made more accurate

(B) *Section F56*—All agreements with outside resources must be amended to specify that the facility assumes professional and administrative responsibility for services rendered.

(C) *Section F66*—All Nursing Staff have not been trained and involved in implementation of patient rights policies.

(D) *Section F69*—Compliance with this section is not always or fully documented.

(E) *Sections F81, 82, 83, 84, 85, 86*—This facility is probably most vulnerable to criticism because of its lack of functional policies to define and ensure good or at least acceptable care. What policies exist, particularly nursing policies, are discoordinated, woefully incomplete, and appear to be somewhat of a "cut and paste" nature.

3. Medical Direction (405.1122).

In compliance with exception of F100. Since patient care policies are not adequately spelled out, it is impossible to assure execution of said policies.

4. Physician Services (405.1123).

In compliance. Continued review is urged to assure that progress is maintained.

5. Nursing Service (405.1124).

In compliance except for F128, 136, 170, 171, 172, 174, 175, 176.

F128—Nursing Policy and Procedure Manuals are not adequate to assure good or acceptable patient care. The Director of Nursing is not given the authority nor responsibility to develop an ac-

ceptable manual. It appears to this author that most of the deficiencies in this section are generated by a lack of professionally adequate policies and procedures. Also, what little is available is not used to train staff.

6. Dietetic Service (405.1125).

Not evaluated by this author.

7. Specialized Rehabilitation Service (405.1126).

In compliance.

8. Pharmacy Service (405.1127).

In compliance—See report of Mr. Jess Gaynor.

9. Laboratory and Radiologic Services (405-.1128).

In compliance.

10. Dental Services (405.1129)

In compliance except F305. Agreement not signed.

11. Social Services (405.1130).

In full compliance.

12. Patient Activities (405.1131).

In compliance. Program needs to be expanded in scope and availability. Present program, in my opinion, is marginally in compliance.

13. Medical Records (405.1132).

Not reviewed.

14. Transfer Agreement (405.1133).

In full compliance.

15. Physical Environment (405.1134).

In substantial compliance, except for F389. Facility has requested waiver for visual warning signal. No decision has been rendered at this writing.

16. Infection Control (405.1135).

Not reviewed.

17. Disaster Preparedness (405.1136).

In substantial compliance. Continued effort in training and drills is necessary.

18. Utilization Review (405.1137).

Insufficient available time to evaluate at this visit.

General Observations

1. *Physical Plant*

The facility continues to be neat and clean. No urine nor strong disinfectant odors were discernible. Patient beds, linen and clothing appeared clean and fresh.

Improvement was noted in maintenance activities. Most of the maintenance problems observed during my June visit were corrected. However, several additional small items were noted. Overall, the housekeeping and maintenance departments have performed very well.

The cubicle curtains listed as a deficiency because of their length were still not replaced at this visit. There is no reason why this constant source of deficiency should remain. The Corporation must expedite.

2. *Patient Care*

Care generally continues to be good. Patients were neatly and cleanly dressed. Personal

grooming appears good, although two (2) male patients were observed to be desperately in need of shaving.

Restorative nursing, physical restoration, and bowel and bladder training programs appear to need refinement and reinforcement. Staff comments and treatment records demonstrate this need. My personal observations confirm the need for improvement in this area.

Respectfully submitted,

(s) William J. Jones
William J. Jones

WJJ:DG

DEFENDANTS' EXHIBIT NO. 7

[Note: Defendants' Exhibit No. 7, Affidavit of Claudette V. Campbell, appears supra, pp. 30a-35a, and therefore is not repeated here.]

DEFENDANTS' EXHIBIT NO. 8

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
TRIAL DIVISION, CRIMINAL SECTION

Misc. No. 76-00-1646

IN RE: The Petition of F. EMMETT FITZPATRICK
District Attorney of Philadelphia

FOURTH PRESENTMENT

To The Honorable Charles P. Mirarchi, Jr., Presiding Judge:

We, the Special Investigating Grand Jury of April Term, 1976, and thereafter, duly charged by the Court to investigate allegations of criminal conduct on the part of such agencies, both public and private and their officials and employees who are involved with the supervision, regulation, and inspection of nursing homes and boarding homes in the City and County of Philadelphia, having obtained knowledge of such matters from witnesses sworn by the Court and testifying before us and finding thereon reasonable grounds to believe, and so believing, upon our respective oaths not fewer than twelve concurring, do hereby make this Fourth Presentment to the Court:

The Fourth Presentment represents the investigation conducted by this Grand Jury into the operation of the Town Court Nursing Center, 1526 Lombard Street, Philadelphia, Pennsylvania. Town Court is a wholly owned subsidiary of Geriatric and Medical Centers, Inc. Geriatric and Medical Centers, Inc. owns and operates eight nursing homes. It is the largest owner of nursing homes in the City of Philadelphia with assets in excess of $10,000,000.00. We felt that an examination of a skilled nursing facility, such as Town Court, which is relatively new, would provide a contrast to the older, smaller and privately owned nursing home which was the subject of our Third Presentment. However, we were wrong. The care offered by Town Court was not only sub-standard, but also placed patients in substantial danger of serious bodily injury and death.

Town Court was built in 1967. A new wing was added in 1975. It has 200 beds. Town Court holds itself out to the public as a skilled nursing center. The law defines such a facility as one which offers nursing care and related medical and health services to people, who, because of age, illness, disease, injury, convalescence, or physical or mental infirmity, need such care. For its services as a skilled nursing facility, Town Court receives $608.00 per month per medical assistance patient from the State Department of Public Welfare.

When we examined the record which we established through civilian and medical testimony, medical records, and other documents, we had no alternative but to recommend that District Attorney F. Emmett Fitzpatrick institute appropriate criminal action.

I. RECKLESSLY ENDANGERING THE LIVES OF PATIENTS

The standards for patients care in a skilled nursing home such as Town Court, are set forth in regulations promulgated by the State Department of Public Welfare. Department of Health Regulations 1328 and 1329 require skilled nursing facilities to employ a medical director who "shall be responsible for the overall coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to patients . . ."

In addition to the Department of Health regulations is the Crimes Code of Pennsylvania §2705, Recklessly Endangering Another Person, which is defined as follows:

> A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.

The initial impetus for our investigation of the Town Court facility was provided by two horrible incidents, the Landsbury and Levin cases, which clearly reflected violation of the State Department of Health regulations and §2705 of the Pennsylvania Crimes Code. Town Court, even to the present date, has failed to comply with Department of Health regulations by employing a medical director personally responsible for coordination of patient care (N.T. October 7, 1976, page 24).

Town Court relied on Administrators, with no medical training, to insure residents were receiving proper

medical treatment.* (N.T. October 7, 1976, page 22.) One of the Administrators, John Holbrook readily admitted that when a medical problem was brought to his attention, "I don't really report the medical problem to anybody specifically. I do my best to take care of it." (N.T. October 7, 1976 page 21.)

During Holbrook's tenure as Administrator, at least twelve residents of Town Court were hospitalized because of improper, sub-standard treatment. Nine of them died. By failing to provide any medical direction to its employees and/or by failing to coordinate medical care to its residents, Town Court acted in a reckless manner.

Town Court held itself out to the public as a skilled nursing center. Over the years, Town Court received millions of dollars from the State to care for the aged who are infirm. Instead of operating a health care center which protected patients, it jeopardized their lives on a daily basis. In two of the worst cases, Town Court's reckless conduct caused Ralph Landsbury, 84, to lose his penis, and David Levin, 85, to lose his right leg.

THE LANDSBURY CASE

Gwendolyn Nelson testified on February 9, 1977. She stated that she was employed by Town Court as a licensed practical nurse for the 11:00 P.M. to 7:00 A.M. shift. On February 27, 1976, she attempted to obtain a urine sample from Mr. Landsbury. He was uncooperative. In accordance with the procedure

* During the two year period January 1975-December 1976, Town Court had a total of six administrators.

which had been established to handle incontinent and/or uncooperative patients, she used wrist restraints on Landsbury and placed a urosheath on his penis and tied it in place.[1]

On February 28, 1976, Landsbury, who had been a continuous resident of Town Court from December 22, 1971, was admitted to Graduate Hospital with advance gangrene of the penis caused by the improper application of a urosheath by employees of Town Court. What should have been a simple matter of observation turned into a catastrophe, as the urosheath had been left on Landsbury's penis for too long a period of time. The examining physician at Graduate testified that the resulting gangrene had been allowed to fester for a period of twenty-four to forty-eight hours. Landsbury's penis had to be amputated. By the end of his stay at Graduate, Mr. Landsbury was walking and eating by himself; speaking with the staff; and had even grown a mustache, all of which indicated to his attending physician that he had renewed his interest in life.

On April 21, 1976, Mr. Landsbury was transferred back to Town Court from Graduate in "satisfactory condition". Nine days later, on May 2, 1976, Landsbury was readmitted to Graduate Hospital, his condition described as severely dehydrated and malnourished.

[1] Nelson further testified that when urosheaths were unavailable, rubber gloves held onto the penis by rubber bands were used. To obtain urine samples from incontinent women patients, cotton balls were placed near the vagina, then the cotton was squeezed into the urine specimen bottle.

One of the Graduate Hospital nurses described Landsbury's condition as follows:

> This time he was so severely dehydrated in such a short period of time, meaning nine days, that he developed sores in his mouth and you only get that when you are extremely dehydrated, and I mean extremely dehydrated. (N.T. July 28, 1976, page 71.)

Town Court records show that Mr. Landsbury was not treated by a physician during the nine days from April 21, 1976 to May 2, 1976. Town Court's records were devoid of orders for his care, treatment, or medication. Graduate Hospital revitalized Landsbury once again, and returned him to Town Court on May 9, 1976. He died there on May 17, 1976.

THE LEVIN CASE

David Levin, age 85, injured the big toe on his right foot on November 9, 1975. Francis Vita, a podiatrist under contract with Town Court, removed the nail plate of the injured toe on November 20, 1975. The following nurses' notes appear in Town Court records:

> 12-15-75: patient has reddened swollen rt. leg c gangrenous big toe, complained pain.
> 1/2/76: . . . and toes on rt. foot which really looks bad.

On December 29, 1975, Vita again trimmed Mr. Levin's toe nails.[2]

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[2] Vita could not explain to this Grand Jury how he could have trimmed Mr. Levin's toe nails on December 29, 1975 and not notice the gangrene setting in.

On January 6, 1976, a physician was finally consulted. He wrote in the Town Court records that for two weeks, a nurse noted discoloration of the toes on the right foot which had become progressively worse. When he observed Mr. Levin, he noted that the gangrene of the right foot, especially the toes, had also involved the right leg. He also noted that Levin's left leg was becoming gangrenous. Immediate hospitalization was ordered by the physician.

Mr. Levin was transferred to Graduate Hospital on January 7, 1976. On his admission, "a very obvious gangrene of both feet was noted. The right foot was completely gangrened, and there was drainage." A below-knee amputation of the right foot was immediately ordered and performed. The patient tolerated the operation well, but died on January 29, 1976. Mr. Levin, too, had been dehydrated and emaciated on admission to the hospital.

In order to determine whether the Landsbury and Levin cases were isolated instances of poor care and neglect, this Grand Jury subpoenaed the records of Town Court patients who required hospitalization at Graduate Hospital during a two-year period. During this period forty-four patients were hospitalized. Kathleen Davies, R.N., a staff ombudsman for the Nursing Home Ombudsman Project, Governor's Office of Human Resources, was asked by this Grand Jury to review the case files. She was requested to select those cases, if any, which, based on her training and experience, were clearly indicative of sub-standard care, negligence, and/or a conscious disregard for the health and welfare of the patients involved. This

Grand Jury, exhibiting the greatest caution, then submitted these selected cases to a medical expert.

David Hawk, M.D.,[3] reviewed the case files selected by Kathleen Davies, R.N. He testified that of the thirteen case histories which he reviewed, twelve involved serious deficiencies in patient care by Town Court which, in turn, rquired hospitalization for the patient. In ten of the cases, the patients died after hospitalization. While Dr. Hawk was unable to state that substandard care and improper treatment was the primary cause of death because of the extreme age of the patients, he did testify that, in his opinion as an expert, the "deficiencies contributed in one way or another to the patients' hospitalizations and deaths." (N.T. March 9, 1977, page 28.)

In case after case, Dr. Hawke stated, there was clear evidence that the nursing staff at Town Court had had absolutely no medical guidance or direction. Dr. Hawk explained that the medical chart is the "hub of information" and is the means by which the medical staff communicates. When a system breaks down, the chart doesn't reflect the care and problems a patient has. (N.T. March 9, 1977, page 32.) Time after time, the system broke down. For example, Bertha Keyes, age 84, became a resident of Town Court on November 6, 1975. A history and physical was not done until four days later. Lab tests on November 6th and 13th

[3] Dr. Hawk graduated from the University of Pennsylvania Medical School. He is board certified in family practice. He received his Masters Degree in Public Health from Johns Hopkins University. He is, presently, a consultant to the State Health Department's Offiee of Quality Assurance, Division of Long Term Care.

showed abnormal urinalysis. There was no follow-up. In the following two months, the Town Court medical staff not only watched her deteriorate but, unbelievably documented that deterioration: "white blood cells too numerous to count"; "innumerable white blood cells"; "right side of body twitching involuntarily"; "patient looks serious and moaning"; "patient feverish"; "looks as if she had a stroke." Finally, on January 6, 1976, she was transferred to Graduate Hospital. The hospital's diagnosis was severe dehydration and contractures of the arms and legs. Dr. Hawk testified that dehydration and contractures are inconsistent with good nursing home care. (N.T. March 9, 1977, page 42-43.) During the entire period at Town Court she was never examined by a physician. In fact, the physician whom Town Court finally asked to examine Mrs. Keyes, Dr. Anthony Leone, testified that one month prior to the Keyes incident, he notified the Administrator of Town Court that he could no longer treat its patients because of the demands of his practice. Town Court's telephone call for help was to a doctor whom they knew would not respond.

Elaine Smith, age 58, was admitted to Town Court on October 29, 1975. Lab tests in November and December showed abnormal urinalysis. There was no follow-up. She became cyanotic. A physician ordered valium over the phone. He did not see that the patient was cyanotic and ordered valium which is a respiratory depressant. She was hospitalized for respiratory distress.

Mary Dodel, age 69, was admitted to Town Court on February 19, 1976. No physical exam was done until three days later. This meant that no orders were

on her chart. The patient could not be cared for properly. In April, 1976, lab tests showed anemia. There was no follow-up. In June, 1976, lab tests showed abnormal urinalysis. Again there was no follow-up. On August 6, 1976, she was admitted to Graduate Hospital with urinary tract infection, anemia requiring transfusions, contractures[4] and dehydration.

Rose Ludwig, age 75, a diabetic, was admitted to Town Court on June 6, 1976. No history or physical was done. Therefore, there was no medical care plan. She continued to receive insulin while in a state of dehydration.

It is important that a person eat and drink when on insulin. Patients must be watched closely or they will go into shock. Mrs. Ludwig was hospitalized for diabetic shock. She returned to Town Court on August 3, 1976. There is no evidence on the medical chart that she was seen by a doctor until August 21, 1976, the day she died.

Gussie Dinnerman, age 78, was admitted to Graduate Hospital on August 15, 1975, because of severe dehydration. Town Court's medical records do not indicate she was having a problem with fluid intake. An examination at Graduate Hospital showed Mrs. Dinnerman to have a normal fluid intake system. Town Court was giving her two types of diuretics (water pills). This medication caused the patient's dehydration.

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[4] Contractures: A tightening of the muscles due to inactivity. It is prevented by a range of motion exercises, i.e., routine nursing care.

Mary Barrett, age 73, was transferred to Graduate for the same reason as Gussie Dinnerman. She was receiving diuretics to such a degree that the admitting diagnosis was "dehydration secondary to inadequate nursing care."

Dorothy Whitaker, age 74, was admitted to Town Court on September 26, 1975. She had a leg ulcer that a lab report, dated December 22, 1975 indicated was positive for staphylococcus, a highly infectious bacteria. No one at Town Court took cognizance of the lab report. No one at Town Court notified a doctor. Town Court took no precaution to protect its extremely frail population. From Dr. Hawk's testimony it is clear that the only acceptable medical procedure would have been to place this patient in isolation. In addition, Mrs. Whitaker's last 13 days at Town Court produced only a single notation on her medical chart. She died on the same day she was finally transferred to Graduate Hospital. On February 12, 1976, a nurse recorded that Mrs. Whitaker was "gasping for breath". When Dorothy Whitaker arrived at Graduate Hospital on February 13, 1976, the attending physician wrote the following: "Patient comes to us in the usual state of neglect, with fever, hypertension, and no story or report". She died that day.

Mary Gaines, age 70, was admitted to Town Court on September 16, 1975. Town Court records show that the admission history and physical were performed on November 28, 1975. Without medical orders, there can be no patient care plan. On February 10, 1976, she was admitted to Graduate Hospital. The diagnosis on admission was "dehydration due to neglect". She suffered a heart attack and died that day.

Reba Sinders was admitted to Town Court on May 13, 1973. The only physical examination Dr. Hawk found on the chart was dated May 12, 1975.

Ralph Durso, age 81, was admitted to Graduate Hospital with a diagnosis of severe dehydration. The medical records of Town Court indicate that Durso was mistakenly receiving diuretics died at Town Court fifteen days after he was released from the hospital.

Dr. Hawk's testimony covered other cases. In each case, his conclusion was the same: there was gross deviations from the standard of conduct which a reasonable man would expect in a skilled nursing center. Dr. Hawk was able to distinguish five areas of gross deficiencies:

(1) lack of proper medical follow-up procedures where physiological danger signs had been noted;

(2) inappropriate or improper medical treatment;

(3) development of health problems inconsistent with proper nursing care;

(4) inability to reach a physician at the time of an emergency;

(5) improper medical record-keeping.

The above deficiencies, taken singularly or in any combination, contributed to the deterioration of the health of the patient and clearly created substantial risk of harm. According to Dr. Hawk, in a skilled nursing center, the individual responsible to coordinate the medical staff to see that patients get appropriate medical care, is the medical director. (March 9, 1977, pages 33-37).

Dr. Hawk's conclusions are corroborated by the testimony of at least four other physicians.

John Senior, M.D., co-director of Emergency Services at Graduate Hospital, treated three of the above-named Town Court patients. In his opinion, the nursing home's neglect caused the patients' dehydration problems and was a contributing factor to their hospitalization. The term "Town Court Special" appeared with regularity on Graduate Hospital medical records. When asked to define the term, Dr. Senior, who was obviously embarrassed by the "slang term", stated, "it's a way of referring to a sick patient from this particular institution who arrive at our hospital in poor condition". (N.T. March 9, 1976, page 29).

Anthony Dougherty, a resident at Graduate Hospital who treated Mrs. Whitaker, included in his definition of "Town Court Special" patients who arrived in the emergency room without medical records from the nursing home. Accurate and complete medical records are necessary for a diagnosis in an emergency situation. Without them, stated Dr. Dougherty, it is difficult, if not impossible, to treat the patients. (N.T. February 23, 1977, pages 80 and 81).

A physician who was affiliated with Town Court for a year and a half when he testified before this Grand Jury, stated that, at the time of the Landsbury incident and subsequent thereto, the "supervision was not what it should have been, the communication was very poor between nursing staff and the physicians. In other words, we were only aware of a problem if a nurse calls us, and we were not apprised all the time until it was too late, you know, the patient was moribund." (N.T. July 29, 1976, page 16).

Arthur Whereat, M.D., Chief of Staff at the Veteran's Hospital testified that Town Court did not meet the standards of care and treatment required by his agency. In June, 1976, five V.A. patients residing at Town Court were removed from the facility.

On November 22-23, 1976, a medical survey team from the Department of Health inspected Town Court. The report reads, in part,

> Many of the records reviewed lack patient care plans. Nursing care plans did not reflect the actual patient needs or goals. Verbal orders were not counter-signed on a timely basis. Physicians' orders were not being executed promptly or correctly on eight records reviewed. Nurses' notes were not chronological or consistent especially as it relates to patients who become ill or manifest unusual signs or symptoms. Medications were not being administered properly nor charged correctly.

Four months earlier, July 19-23, 1976, the Federal Department of Health, Education and Welfare conducted an inspection. Town Court was notified, at that time, that it did not meet the conditions of participation in the areas of "medical direction" and "skilled nursing services".

As late as March 1, 1977, the State Department notified Town Court that their plan to correct deficiencies was unacceptable.

RECOMMENDATION

The Department of Public Health Regulations place the responsibility for meeting its minimum standards

on the licensee of the facility. (Reg. 305.1). It appears further that the reckless conduct we have described was performed by agents and employees on behalf of the licensee and within the scope of their employment.

We, therefore, recommend the following charges, with appropriate counts, be lodged against the holder of the licensee, Town Court Nursing Home, Inc.:

> Failure to Hire a Medical Director pursuant to Department of Public Welfare Regulation 1328—1329.
>
> Failure to Perform Admission Histories and Physical Examinations to Determine Immediate Needs of Patients Pursuant to Department of Public Welfare Regulation No. 1203.
>
> Failure to Provide Patient Supervision by a Physician Pursuant to Department of Public Welfare Regulation No. 1204.
>
> Failure to Provide a Physician in Cases of Emergency Pursuant to Department of Public Welfare Regulation No. 1205.
>
> Failure to Maintain Proper Medical Records Pursuant to Department of Public Welfare Regulation No. 1207 and No. 1208.
>
> Recklessly Endangering the Lives of Patients Pursuant to 18 C.P.S.A. §2705.

II. SOLICITATION AND ACCEPTANCE OF ADDITIONAL REIMBURSEMENT FOR WELFARE PATIENTS

Geriatric and Medical Centers, Inc., is a publicly held corporation which owns Town Court Nursing

Home, Inc. Daniel Veloric is the President of Geriatric and Medical Centers, Inc. He has held that position for approximately four years. Mr. Veloric testified that it was his responsibility as President of Geriatric and Medical Centers, Inc., to see that "we fulfill all the obligations of the license that we hold for any one of our facilities"[5] and "adhere to the regulations as set forth by the governing bodies or government bodies that regulate nursing homes". (N.T. October 8, 1976, page 29).

One of the regulations with which he, as the President of Geriatric and Medical Centers, Inc., was required to abide by under the Public Welfare Code prevented him from seeking or accepting additional reimbursement for patients admitted to his facilities with eligibility for medical assistance. The statute states unequivocally:

> As a condition of participation in the medical assistance program, vendors of services shall agree to accept the rates of payment authorized by this article and shall not seek nor accept additional payments. . . . 62 P.S. §441.1.

Geriatric and Medical Centers, Inc. and Town Court violated this statute when Daniel Veloric devised a scheme to obtain additional compensation from certain Philadelphia hospitals. Veloric seized upon the fact that hospitals do not get full reimbursement for patients whose only requirement is skilled nursing care. Therefore, he knew the hospitals were under tremendous financial pressure to transfer such patients to a skilled nursing center as quickly as possible to free up a bed for which they could normally charge $150.00 to $200.00 a day.

[5] Geriatrics and Medical Centers, Inc. owns Town Court, Cobbs Creek, Mayo, Cheltenham and Walnut Park Plaza in the City of Philadelphia.

Veloric's proposal to Graduate Hospital is documented in a memorandum prepared by the controller of Graduate Hospital dated March 20, 1975:

> Mr. Veloric indicated that Town Court and Cobbs Creek are presently receiving $750 bimonthly from Graduate for its assistance in the discharge planning for patients to be referred to nursing homes and in relating with the physicians staff at Graduate relative to continuity of care for these patients. More importantly, however, it has assured the availability of beds in these two institutions for Graduate referred patients.
>
> Mr. Veloric indicated that supplemental payments above the $20 was necessary to give him the financial patient mix necessary to cover the cost and to generate the required profit margin. He also must operate a high percentage of occupancy (98-100%) on which guaranteed payment of vacant beds to have them available can help him. He is willing to discuss finances in any way which is acceptable to the involved hospital. His chain of nursing homes include eight facilities with 1,400 beds.

In a written agreement between Geriatric and Medical Centers, Inc. and Presbyterian-University of Pennsylvania Medical Center, Geriatric agreed to reserve five beds for the sole use of the hospital's patients and to "guarantee" admission for its patients. In return,

the hospital agreed to pay "$12,000.00 annually for the admissions guarantee and the designation of the five beds", and "$200.00 monthly for each additional bed". The program proved so successful that both the number of beds and the placement fee were increased.

All patients placed under these agreements received medical assistance approvals prior to placement.

The financial records of both hospitals and Geriatric and Medical Centers, Inc., and Town Court document the payment and receipt of $83,184.00 in placement fees. Graduate paid $34,500.00 from July, 1974 to July, 1975. Presbyterian paid $48,684.00 from November, 1975 to January, 1977. Town Court's share amounted to $38,942.00. The hospitals, in turn, were reimbursed by the State for the monies it paid to Geriatric and Medical Centers, Inc.[6] Unwittingly, the State was subverting its own statutes by subsidizing a plan which not only gave preferential placement to patients, but also insured placement to a sub-standard facility.

Needless to say, Geriatric and Medical Centers, Inc. and its subsidiaries, billed the State for the full amount of their medical assistance on the patients covered by the agreements. At no time did Geriatric and Medical Centers, Inc. give the State credit for the monies it received from Graduate and Presbyterian.

The Grand Jury received testimony from representatives of the Philadelphia County Board of Assistance

[6] The hospitals did not conceal or misrepresent the true nature of the expense. This Grand Jury has learned that since we questioned the propriety of reimbursing these placement fees, these items have been disallowed by the State.

as well as the Office of the Controller for the State Department of Welfare. From their testimony it was clear to us that a fraud had been committed.

They testified that any medicaid payment for skilled nursing care must be made pursuant to a written request for reimbursement from the nursing home. The nursing home is also obligated to notify the State Department of Welfare through the local County Board of Assistance of any additional funds which are being used by the home to defray the cost of nursing care for each patient. Neither Geriatric and Medical Centers, Inc., nor its subsidiaries never notified the County Board of Assistance or the State Department of Welfare of its agreements with Graduate and Presbyterian Hospitals. Had this been done, the amount received from the hospitals would have been deducted by the state in its reimbursement to the nursing home.

Having made our presentment based on our investigation of the financial records of Geriatric and Medical Centers, Inc., we would be remiss if we did not acknowledge the help given this Grand Jury by Al Benedict, Auditor General for the Commonwealth of Pennsylvania.

The District Attorney recognized the need for seasoned auditing experience at the outset of this investigation. The Auditor General was contacted. His staff's contribution to the District Attorney's investigative efforts were immediate and significant. He is to be commended.

RECOMMENDATION

We, therefore, recommend that the District Attorney charge Geriatric and Medical Centers, Inc., Town

Court with Theft by Deception in that they sought and/or received additional payments for patients under the medical assistance program. We recommend that they be charged under the appropriate sections of the Pennsylvania Crimes Code.

The Grand Jury has reviewed the evidence presented to us carefully. We have heard forty witnesses give 45,000 pages of testimony. Volume alone, however, does not account for the full complexity of this matter. The facts which we have uncovered is further obscured by the realities of corporate management. We could not in good conscience lay blame on poorly trained and inadequately supervised employees. At the same time, we recognize that high level management is insulated from the daily operation of the home. Each decision is relayed through the multiple layers of the corporate chain of command. The actual execution of orders is carried out by employees far removed from the decision making process. Individual responsibility is diluted by the sheer number of people employed by Geriatric and Medical Centers, Inc. At this time the focus of individual criminal responsibility is not clear. It is our intention to call additional witnesses. We will determine, if possible, whether individuals can be held criminally responsible for the conditions at Town Court.

Although the patterns of patient abuse uncovered by this Grand Jury are immediately apparent, the actual burden of legal responsibility for criminal acts is not. A publicly held corporation is far different from the family owned nursing home which was the subject of our last presentment. It is for these reasons that we have limited criminal responsibility to Town Court

and Geriatric and Medical Centers, Inc. We foresee that the District Attorney may have some difficulty with these prosecutions. We are certain, however, that criminal prosecution is not the answer to the problem of ensuring that the elderly in our community receive decent care. The District Attorney's Office does not have the power to make Town Court a decent nursing home. There are other agencies which are charged with enforcing health and welfare laws. Those agencies can force Town Court and every other marginally operated nursing facility in this city to provide decent care. It is a fact that nursing homes have become a profit making industry in this country because of state and federal monies that are available. Indeed, it is more profitable to operate a marginal facility.

It is the consensus of this Grand Jury that the Department of Health and Welfare can force facilities like Town Court into complying with each and every health and welfare regulation, by simply cutting off state funds—the source of their profits and appointing a master.

We strongly recommend that the Honorable Charles P. Mirarchi, Jr., take the following action immediately:

1. Request the Departments of Health and Welfare to appoint a "master" to monitor the daily operation of Town Court with the authority to make recommendations to Town Court for immediate implementation. If Town Court fails to comply with the recommendations within a short period of time, the "master" should initiate proceedings to revoke Town Court's license. The

"master" shall make all reports available to the Court.

2. Request the Department of Welfare to cease all payments to Town Court for its medical assistance patients. All payments are to cease until the Court is satisfied that Town Court has met the requirements of the "master".

3. Request the Department of Health to conduct an immediate inspection of the Town Court facility and a physical examination of each of its patients and forward a report to the Court.

The Grand Jury has received the most recent Health Department inspection reports for the facility. They indicate inadequate care and danger to patients.